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PUBLIC HEARING

before

ASSEMBLY LABOR COMMITTEE

on

ASSEMBLY BILL NO. 833

and

SENATE BILL NO. 716

(Occupational Safety and Health Standards)

Held:

October 29, 1974

Senate Chamber

State House

Trenton, New Jersey

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MADISON, N.J.

MEMBERS OF COMMITTEE PRESENT:

- Assemblyman Christopher J. Jackman (Chairman)
- Assemblyman John J. Sinsimer
- Assemblyman Willie B. Brown
- Assemblyman Thomas A. Gallo
- Assemblyman Joseph D. Patero
- Assemblywoman Rosemary Totaro
- Assemblyman Robert E. Littell

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ASSEMBLY, No. 833

STATE OF NEW JERSEY

INTRODUCED JANUARY 24, 1974

By Assemblyman GALLO

Referred to Committee on Labor Relations

AN ACT to assure safe and healthful working conditions for the working men and women of New Jersey; by authorizing enforcement of rules developed under the act, thereby reassuming that responsibility from the United States Government which had preempted the occupational safety and health field in the Williams-Steiger Act of 1970; by providing comprehensive legislation to replace existing State statutes in this field; by providing for research, information, education, training and technical assistance in this field; and by supplementing Title 34 of the Revised Statutes and repealing sundry acts and parts of acts.

1 WHEREAS, The State of New Jersey has sought in the past to
2 reduce or eliminate the growing losses of life and health arising
3 out of work situations through various statutes and regulations;
4 and

5 WHEREAS, The Congress of the United States has determined that
6 injuries, illnesses, and deaths arising from work situations
7 throughout the Nation have affected interstate commerce to a
8 degree requiring preemption of the occupational safety and
9 health field, but qualifying that preemption to allow the State
10 to resume regulation and enforcement of rules in the field by
11 formulating and adopting a State plan of which this legislation
12 is a part; and

13 WHEREAS, The State of New Jersey has determined that in order
14 to better protect its workers and citizens it should resume the
15 duties of regulation and enforcement of rules in places of em-
16 ployment by formulating and adopting such a State plan,
17 therefore

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Title. This act shall be known and may be cited as the "New
2 Jersey Occupational Safety and Health Act."

1 2. Declaration of purpose. It shall be the purpose of this act to
2 resume such regulatory and enforcement power in the occupational
3 safety and health field as a State plan and agreements with the
4 United States Department of Labor may permit under the terms
5 and conditions of the Williams-Steiger Occupational Safety and
6 Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 651).

7 This act shall be interpreted and construed so as to effectuate
8 its general purpose to be at least as effective as the Federal Act
9 and the agreements, contracts, standards, rules, and regulations
10 made or promulgated thereunder.

1 3. Definitions. As used in this act:

2 a. "Act" means this act and the rules promulgated or adopted
3 hereunder.

4 b. "Commerce" means any trade, traffic, commerce, transporta-
5 tion or communication within the State of New Jersey or among
6 the several states.

7 c. "Commissioner" means the Commissioner of the Department
8 of Labor and Industry of the State of New Jersey or his authorized
9 representative.

10 d. "Employee" means a person suffered or permitted to work
11 by or provide services for an employer for wages, salary, any other
12 compensation, or pursuant to any other contractual obligation.

13 e. "Employer" means a person who has employees and who
14 engages in or affects commerce, but does not include the United
15 States or the State of New Jersey or any political subdivision
16 thereof.

17 f. "Federal Act" means the Williams-Steiger Occupational
18 Safety and Health Act of 1970, P. L. 91-596, 84 Statutes 1590,
19 29 U.S.C. 651, and subsequent amendments thereto.

20 g. "Federal standard" means a standard adopted and promul-
21 gated by the United States Department of Labor which requires
22 conditions, or the adoption or use of one or more practices, means,
23 methods, operations, or processes, reasonably necessary or appro-
24 priate to provide safe or healthful employment or places of em-
25 ployment.

26 h. "Owner" means the person possessing legal or equitable
27 title of premises used or to be used in whole or in part as a place
28 of employment.

29 i. "Person" means one or more individuals, partnerships, cor-
30 porations, associations, business trusts, legal representatives,
31 collective bargaining representatives, or any organized group of
32 persons.

33 j. "Place of employment" means any place in or about which
34 an employee is suffered or permitted to work by or for an employer.

35 k. "Rule" means the whole or a part of an agency statement of
36 general or particular applicability and continuing effect that im-
37 plements, interprets, or prescribes law or policy or describes the
38 organization, procedure, or practice requirements of the agency
39 under this act and includes regulations and adopted standards
40 promulgated hereunder.

41 l. "Secretary of Labor" means the Secretary of Labor, United
42 States Department of Labor.

43 m. "State plan" means the agreements and contractual arrange-
44 ments made by the State with the United States Department of
45 Labor and the Secretary of Labor under which State development
46 and enforcement of occupational safety and health rules may be
47 carried forward.

1 4. Applicability.

2 a. This act shall apply with respect to employment performed
3 in any place of employment in the State of New Jersey, except
4 those over which the Federal Government reserves exclusive juris-
5 diction for purposes of occupational safety and health.

6 b. (1) No other State agency, municipality, or other govern-
7 mental subdivision of the State shall have the power to make any
8 rule, bylaw, or resolution providing for the occupational safety
9 and health of those persons covered under this act.

10 (2) Nothing in this act, however, shall limit the right and au-
11 thority of any other State agency, municipality, or other govern-
12 mental subdivision of the State to make inspections for public
13 safety and health in places of employment covered under this act
14 or to act to meet any emergency.

15 c. Nothing in this act shall be construed to supersede or in any
16 manner affect any workmen's compensation law or to enlarge or
17 diminish or affect in any manner the common law or statutory
18 rights, duties, or liabilities of employers and employees under any
19 other law with respect to injuries, diseases, or death of employees
20 arising out of or in the course of employment.

1 5. Agreement authority. The commissioner shall have the power
2 and authority to enter into such agreements or contracts, including
3 the negotiation and arranging of grants, with the Secretary of

4 Labor and other State agencies, as shall be necessary to effectuate
5 a State plan and to accomplish the purposes of this act.

1 6. Duties.

2 a. Each employer—

3 (1) Shall furnish to each of his employees employment and a
4 place of employment which are free from recognized hazards that
5 are causing or are likely to cause death or serious physical harm
6 to his employees;

7 (2) Shall comply with all occupational rules and orders promul-
8 gated or issued under this act.

9 b. Each employee shall comply with all occupational safety and
10 health rules and orders promulgated or issued pursuant to this
11 act which are applicable to his own actions and conduct.

12 c. Each owner of any premises used in whole or in part as a
13 place of employment shall be responsible for its structural ade-
14 quacy, protection against the origin and spread of fire and for
15 the provision of adequate general ventilation and lighting, emer-
16 gency egresses, fire warning systems and safe elevator systems
17 and shall comply with all orders issued pursuant to this act.
18 Failure to so comply shall make an owner subject to the enforce-
19 ment procedures and penalties set forth in this act, but the initia-
20 tion of such proceedings or the imposition of penalties on an
21 owner pursuant to this act shall not relieve any employer from
22 providing his employees with the protections required by this
23 act or from having enforcement and penalty proceedings brought
24 against an employer for the same violation.

1 7. Occupational safety and health rules.

2 a. Where the Secretary of Labor has adopted and promulgated
3 a Federal standard in compliance with the requirements of sec-
4 tion 6 of the Federal Act, the commissioner may publish the Fed-
5 eral standard in the New Jersey Register and such publication
6 shall operate to make the Federal safety and health standard
7 the applicable rule of the State of New Jersey, without compliance
8 with the provisions of section 4 of the Administrative Procedure
9 Act (C. 54:14B-4). The commissioner, nevertheless, shall con-
10 form to the provisions of section 5 of the Administrative Procedure
11 Act (C. 52:14B-5) regarding the filing and publication of such
12 rules.

13 b. Where, in the discretion of the commissioner, it is determined
14 necessary and proper to promulgate a rule where no Federal
15 standard exists or where a rule more comprehensive or effective
16 than a Federal standard is regarded necessary by the commissioner
17 to better protect the safety and health of the employees of this

18 State, the commissioner may promulgate, modify, or revoke any
19 occupational safety and health rule in the following manner:

20 (1) Whenever the commissioner, upon the basis of information
21 submitted to him by any interested persons or information de-
22 veloped by the commissioner or otherwise available to him,
23 determines that a rule should be promulgated for the reasons
24 stated in this section, the commissioner may request recommenda-
25 tions of an advisory committee appointed under section 14 of this
26 act. The commissioner shall provide the advisory committee with
27 his proposals and all pertinent factual information available, in-
28 cluding the results of any research, demonstrations and experi-
29 ments. An advisory committee shall submit to the commissioner
30 its recommendations regarding the rule to be promulgated within
31 90 days from the date of its receipt of the commissioner's pro-
32 posal or within such longer or shorter period as may be prescribed
33 by the commissioner, but in no event for a period longer than 270
34 days.

35 (2) The commissioner shall publish a proposed rule or notice
36 of a proposed rule and its availability to employers, owners,
37 employees and the public, promulgating, modifying, or revoking
38 a safety or health rule in the New Jersey Register and shall afford
39 interested persons a period of 30 days after publication to submit
40 written data or comments. Where an advisory committee is
41 appointed and the commissioner determines that a rule should be
42 issued, he shall publish the proposed rule within 60 days after
43 submission of the advisory committee's recommendations or the
44 expiration of the period prescribed by the commissioner for such
45 submission.

46 (3) (a) On or before the last day of the period provided for
47 the submission of written data or comments under paragraph
48 (2), any interested person may file with the commissioner written
49 objections to the proposed rule, stating the grounds therefor and
50 requesting a public hearing on such objections. Within 30 days
51 after the last day for filing such objections, the commissioner shall
52 publish in the New Jersey Register a notice specifying the safety
53 or health rule to which objections have been filed and a hearing
54 requested, and specifying a time and place for such hearings.

55 (b) In addition, where the commissioner determines at the time
56 of publication of the proposed rule that a public hearing will be
57 necessary, he may publish notice of such hearing simultaneously
58 with notice of the proposed rule.

59 (4) Within 60 days after the expiration of the period provided
60 for the submission of such written data or comments under para-

61 graph (2), or within 60 days after completion of a hearing in
62 paragraph (3), the commissioner shall issue a rule promulgating,
63 modifying, or revoking a safety or health rule or make a determina-
64 tion that a rule should not be issued. Such a rule shall be filed
65 and published in accordance with the provisions of section 5 of
66 the Administrative Procedure Act (C. 52:14B-5); provided, how-
67 ever, that a rule may contain a provision delaying its effective
68 date for such period not in excess of 90 days as the commissioner
69 determines may be necessary to insure that affected employers,
70 owners, and employees will be informed of the existence of the
71 rule and of its terms and that affected employers are given an
72 opportunity to familiarize themselves and their employees with
73 the existence of the requirements of the rule.

74 (5) The commissioner shall take notice of the intent of the
75 Federal Act to provide special attention to promulgation of
76 standards dealing with toxic materials and harmful agents and
77 shall give priority to the establishment of rules concerning such
78 standards.

1 8. Emergency temporary rules.

2 a. (1) Pursuant to the authority of section 4 (c) of the Ad-
3 ministrative Procedure Act (C. 52:14B-4 (c)), the commissioner
4 shall have the authority to adopt an emergency temporary
5 standard immediately upon its issuance and publication in the
6 Federal Register by the Secretary of Labor under the terms of
7 the Federal Act. The commissioner shall publish such standard
8 as a rule for a minimum of 3 successive days in at least five
9 newspapers in the State in order to provide notice of the rule's
10 existence and the commissioner's intent to enforce the rule under
11 this act, and the commissioner shall publish such rule in the New
12 Jersey Register at his first opportunity. In the selection of the
13 newspapers, consideration shall be given to geographical location
14 and size of circulation. Such notice shall not constitute a pre-
15 requisite to the enforcement of an emergency temporary rule by
16 the commissioner.

17 (2) Where a Federal emergency temporary standard is adopted
18 as a temporary rule by the State, such rule shall be effective until
19 both the Secretary of Labor and the commissioner have either
20 withdrawn such temporary standard and rule or promulgated a
21 permanent standard and rule superseding the temporary standard
22 and rule.

23 b. (1) Where no Federal emergency temporary standard has
24 been provided, but the commissioner determines (A) that em-
25 ployees are exposed to a grave danger from exposure to sub-

stances or agents determined to be toxic or physically harmful or from new hazards, and (B) that such emergency standard is necessary to protect employees from such danger, the commissioner shall provide for an emergency temporary rule to take immediate effect upon its publication for a minimum of 3 successive days in at least five newspapers in the State. Consideration in the selection of the newspapers shall be given to geographical location and size of circulation. The commissioner shall publish such rule in the New Jersey Register at his first opportunity and make such further provisions by rule as he shall deem necessary to inform employers, owners, and employees of the existence of the rule and his intention to enforce it.

(2) Where the commissioner has provided for an emergency temporary rule under paragraph (1) of this subsection, such rules shall be effective until superseded by a rule promulgated in accordance with the procedures prescribed in section 7 b. of this act or a determination is made that no rule should be promulgated. The commissioner shall promulgate a rule or determine that no rule should be promulgated under this subsection no later than 6 months after publication of the emergency temporary rule, and shall publish notice of his intent within 60 days of the expiration of the 6-month period.

3. Warnings, protective equipment and medical examinations.

Any rule promulgated under this act shall prescribe the use of labels or other appropriate forms of warning as are necessary to insure that employees are apprised of all hazards to which they are exposed, relevant symptoms and appropriate emergency treatment, and proper conditions and precautions of safe use or exposure. Where appropriate, such rule shall also prescribe suitable protective equipment and control or technological procedures to be used in connection with such hazards and shall provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees. In addition, where appropriate, any such rule shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure. The commissioner, in cooperation with the Secretary of Labor, shall provide rules regarding medical examinations in the nature of research and make appropriate modifications in the foregoing requirements relating to the use of labels or other forms of warning, monitoring, or

22 measuring, and medical examinations as may be warranted by
23 Federal or State experience. The results of tests or examinations
24 required by rule or in the nature of research shall be furnished to
25 the commissioner and, at the request of the employee, to his
26 physician.

1 10. Judicial review of rules. Any person who may be adversely
2 affected by a rule issued under this act may at any time prior to
3 45 days after such rule is promulgated file a petition challenging
4 the validity of such rule with the Appellate Division of the Superior
5 Court for a judicial review of such rule. The filing of such petition
6 shall not, unless otherwise ordered by the court, operate as a stay
7 of the rule. The determinations of the commissioner shall be
8 conclusive if supported by substantial evidence in the record con-
9 sidered as a whole.

1 11. Temporary variance orders.

2 a. Any affected employer or owner may apply to the commis-
3 sioner for a temporary order granting a variance from a rule
4 promulgated under this act. Such temporary order shall be
5 granted only if the employer or owner filed an application which
6 meets the requirements of subsection b. and establishes that (1)
7 he is unable to comply with a rule by its effective date because of
8 unavailability of professional or technical personnel or of materials
9 and equipment needed to come into compliance with the rule or
10 because necessary construction or alteration of facilities cannot
11 be completed by the effective date (2) he is taking all available
12 steps to safeguard affected employees against the hazards covered
13 by the rule and (3) he has an effective program for coming into
14 compliance with the rule as quickly as practicable. Any temporary
15 order issued under this subsection shall prescribe the practices,
16 means, methods, operations and processes which the employer or
17 owner must adopt and use while the order is in effect and state
18 in detail his program for coming into compliance with the rule.
19 Such a temporary order may be granted only after notice to em-
20 ployees and an opportunity for a hearing; provided, that the com-
21 missioner may issue one interim order to be effective until a
22 decision is made on the basis of the hearing. No temporary order
23 may be in effect for longer than the period needed by the employer
24 or owner to achieve compliance with the rule or 1 year, whichever
25 is shorter, except that such an order may be renewed not more
26 than twice (1) so long as the requirements of this subsection are
27 met and (2) if an application for renewal is filed at least 90 days
28 prior to the expiration date of the order. No interim renewal of
29 an order may remain in effect for longer than 180 days.

30 b. An application for a temporary order under this section shall
31 contain:

32 (1) A specification of the rule or portion thereof from which the
33 employer or owner seeks a variance;

34 (2) A representation by the employer or owner supported by
35 representations from qualified persons having first hand knowledge
36 of the facts represented, that he is unable to comply with the rule
37 or portion thereof and a detailed statement of the reasons thereof;

38 (3) A statement of the steps he has taken and will take (with
39 specific dates) to protect employees against the hazard covered
40 by the rule;

41 (4) A statement of when he expects to be able to comply with
42 the rule and what steps he has taken and what steps he will take
43 (with dates specified) to come into compliance with the rule; and

44 (5) A certification that he has informed affected employees of
45 the application by giving a copy thereof to their authorized repre-
46 sentative, posting a statement giving a summary of the application
47 and specifying where a copy may be examined, and the place or
48 places where notices to employees are normally posted and by
49 other appropriate means. A description of how employees have
50 been informed shall be contained in the certification. The in-
51 formation to employees shall also inform them of their right to
52 petition the commissioner for a hearing.

53 c. The commissioner is authorized to grant a variance from any
54 rule or portion thereof whenever he determines, or the Secretary
55 of Labor certifies, that such variance is necessary to permit an
56 employer to participate in an experiment approved by the Federal
57 Government designed to demonstrate or to validate new and
58 improved techniques to safeguard the health or safety of em-
59 ployees.

1 12. Variance rules and orders. Any affected employer or owner
2 may apply to the commissioner for a variance from a rule pro-
3 mulgated under this act. Affected employees and their representa-
4 tives shall be given notice of each such application and an oppor-
5 tunity to participate in a hearing. The commissioner shall issue
6 such variance order or rule if he determines on the record, after
7 opportunity for an inspection where appropriate and a hearing,
8 that the proponent of the variance has demonstrated by a pre-
9 ponderance of the evidence that the conditions, practices, means,
10 methods, operations or processes used or proposed to be used
11 by an employer or owner will provide employment and places of
12 employment to affected employees which are as safe and healthful

13 as those which would prevail if he complied with the rule. The
14 order or variance rule so issued shall prescribe the conditions
15 the employer or owner must maintain, and the practices, means,
16 methods, operations, and processes which he must adopt and utilize
17 to the extent they differ from the rule in question. Such an order
18 or variance rule may be modified or revoked upon application by
19 an employer, owner, employees, or by the commissioner on his
20 own motion, in the manner prescribed for issuance under section
21 11 or section 12.

1 13. Plans and specifications.

2 a. The commissioner shall have the power and authority to
3 require by rules promulgated hereunder that the owner of any
4 building or structure to be erected or adapted as a place of em-
5 ployment submit to the commissioner such plans and specifications
6 for his approval and other data relative thereto before the building
7 or structure is erected or adapted.

8-9 b. The commissioner shall further have the power and authority
10 to require by rules promulgated hereunder that prior to the in-
11 stallation of sanitation facilities, fire prevention and protection,
12 egresses, exhaust and ventilating systems, elevators and other
13 conveying equipment and employee protective devices and equip-
14 ment the owner or employer submit plans and specifications for
15 his approval and other data relative thereto.

1 14. Advisory committees.

2 a. (1) There is hereby established within the Department of
3 Labor and Industry a New Jersey State Occupational Safety and
4 Health Advisory Committee consisting of 25 members appointed
5 by the commissioner. One of the members shall act as chairman.
6 The members shall be selected upon the basis of their experience
7 and competence in the field of occupational safety and health.
8 Representation of labor and management on the committee shall
9 as nearly as possible be equal. Nothing in this subsection shall
10 prohibit the commissioner from appointing public members.

11 (2) The committee shall advise the commissioner regarding rules
12 proposed to be adopted under this act and on matters regarding
13 the administration of the act.

14 (3) The committee shall adopt rules to govern its proceedings
15 which rules shall be subject to the ratification of the commissioner.
16 The commissioner shall appoint a secretary from within the depart-
17 ment for the committee. The committee shall hold no fewer than
18 two meetings during each calendar year. All meetings of the com-
19 mittee shall be open to the public and a record shall be kept which
20 shall be open to public inspection.

21 b. Such additional advisory committees may be appointed by
22 the commissioner as in his discretion may be needed to further the
23 purposes of this act. The provisions of subsection a. (3) of this
24 section shall apply to the meetings of such committees. In all
25 such advisory committees, representation of labor and manage-
26 ment shall as nearly as possible be equal. Nothing in this sub-
27 section shall prohibit the commissioner from appointing public
28 members.

1 15. Administrative authority. The authority, under the direc-
2 tion of the commissioner, to administer and enforce the provisions
3 of this act is established in the Division of Workplace Standards
4 of the Department of Labor and Industry.

1 16. Inspections and investigations.

2 a. In order to carry out the purposes of this act, the commis-
3 sioner, upon presenting appropriate credentials to the owner,
4 employer, operator, or agent in charge, is authorized:

5 (1) To enter without delay and at reasonable times any factory,
6 plant, establishment, construction site, or other area where work
7 is performed by an employee; and

8 (2) To inspect and investigate during regular working hours
9 and at other reasonable times, and with reasonable limits and in
10 a reasonable manner, any such place of employment and all
11 pertinent conditions, structures, machines, apparatus, devices,
12 equipment, and materials therein, and to question privately any
13 such employer, owner, operator, agent or employee.

14 b. In making his inspections and investigations under this act
15 the commissioner may require the attendance and testimony of
16 witnesses and the production of evidence under oath. Witnesses
17 shall be paid the same fees and mileage that are paid witnesses
18 in the courts of the State. In the case of a contumacy, failure, or
19 refusal of any person to obey such an order, the Law Division of
20 the Superior Court, within the jurisdiction of which such person
21 is found or resides or transacts business, upon the application by
22 the commissioner, shall have jurisdiction to issue to such person
23 an order requiring such person to appear to produce evidence if,
24 as, and when so ordered, and give testimony relating to the matter
25 under investigation or in question, and any failure to obey such
26 order of the court may be punished by said court as a contempt
27 thereof.

28 c. Subject to rules issued by the commissioner, a representative
29 of the employer and a representative authorized by his employees
30 shall be given an opportunity to accompany the commissioner
31 during the physical inspection of any workplace under subsection a.

32 for the purpose of aiding such inspection. Where there is no
33 authorized employee representative, the commissioner shall consult
34 with a reasonable number of employees concerning the matters
35 of health and safety in their place of employment.

36 d. (1) Any employees or representative of employees who believe
37 a violation of a safety or health rule exists that threatens physical
38 harm, or that imminent danger exists, may request an inspection
39 by giving notice to the commissioner of such violation or danger.
40 Any such notice shall be reduced to writing, shall set forth with
41 reasonable particularity the grounds for the notice, and shall be
42 signed by the employees or representative of employees, and a copy
43 shall be provided the employer or his agent no later than at the
44 time of inspection, except that, upon the request of the person
45 giving such notice, his name and the names of the individual
46 employees referred to therein shall not appear in such copy or on
47 any record published, released or made available by the commis-
48 sioner under this section. If upon receipt of such notification the
49 commissioner determines there are reasonable grounds to believe
50 that such violation or danger exists, he shall make a special in-
51 vestigation in accordance with the provisions of this section as
52 soon as practicable, to determine if such violation or danger exists.
53 If the commissioner determines there are no reasonable grounds
54 to believe that a violation or danger exists, he shall promptly notify
55 the employees or representative of the employees in writing of
56 such determination.

57 (2) Prior to or during any inspection of a place of employment,
58 any employees or representative of employees employed in such
59 place of employment may notify the commissioner or any repre-
60 sentative of the commissioner responsible for conducting the
61 inspection, in writing, of any violation of this act which they have
62 reason to believe exists in such place. The commissioner shall,
63 by rule, establish procedures for review of any refusal by a
64 representative of the commissioner to issue a citation with respect
65 to any such alleged violation and shall furnish the employees or
66 representative of employees requesting such review a written state-
67 ment of the reason for the commissioner's disposition of the case.

68 e. The commissioner shall prescribe such rules as he may deem
69 necessary to carry out responsibilities under this act, including
70 rules dealing with the inspection of an employer's establishment.

1 17. Recordkeeping.

2 a. Each employer shall make, keep and preserve, and make
3 available to the commissioner such records relating to this act

4 as he may prescribe by rule as necessary or appropriate for the
5 enforcement of this act or for developing information regarding
6 the causes and prevention of occupational accidents and illnesses.
7 In order to carry out the provisions of this subsection such rules
8 may include provisions requiring employers to conduct periodic
9 inspections. The commissioner shall also issue rules requiring
10 that employers, through posting of notices or other appropriate
11 means, keep their employees informed of their protections and
12 obligations under this act, including the provisions of applicable
13 occupational safety and health rules.

14 b. The commissioner shall prescribe rules requiring employers
15 to maintain accurate records of, and to make periodic reports on,
16 work-related deaths, injuries and illnesses other than minor in-
17 juries requiring only first aid treatment and which do not involve
18 medical treatment, loss of consciousness, restriction of work or
19 motion, or transfer to another job.

20 c. The commissioner shall issue rules requiring employers to
21 maintain accurate records of employee exposures to potentially
22 toxic materials or harmful physical agents which are required to
23 be monitored or measured under section 9. Such rules shall pro-
24 vide employees or their representatives with an opportunity to
25 observe such monitoring or measuring, and to have access to the
26 records thereof. Such rules shall also make appropriate provision
27 for each employee or former employee to have access to such
28 records as will indicate his own exposure to toxic materials or
29 harmful physical agents.

30 d. Each employer shall promptly notify any employee who has
31 been or is being exposed to toxic materials or harmful physical
32 agents in concentrations or at levels which exceed those pre-
33 scribed by an applicable occupational safety and health rule pro-
34 mulgated under this act, and shall inform any employee who is
35 being thus exposed of the corrective action being taken.

1 18. Citations.

2 a. If, upon inspection or investigation, the commissioner or his
3 authorized representative believes that an employer or owner has
4 violated a requirement of section 6 of this act, of any rule pre-
5 scribed and promulgated pursuant to this act, or any orders or
6 variances prescribed or permitted pursuant to this act, he shall
7 promptly issue a citation to the employer or owner. Each citation
8 shall be in writing and shall describe with particularity the nature
9 of the violation, including the reference to the provision of the act,
10 rule or order alleged to have been violated. In addition, the citation
11 shall fix a reasonable time for the abatement of the violation.

12 The commissioner may prescribe procedures for the issuance of
13 a notice in lieu of a citation with respect to de minimis violations
14 which have no direct or immediate relationship to safety or health.

15 b. Each citation issued under this section, or a copy or copies
16 thereof, shall be prominently posted, as prescribed in rules issued
17 by the commissioner, at or near each place a violation referred
18 to in the citation occurred.

19 c. No citation may be issued under this section after the expira-
20 tion of 6 months following the discovery of the occurrence of any
21 violation by the commissioner.

1 19. Procedure for enforcement.

2 a. If, after an inspection or investigation, the commissioner
3 issues a citation under section 18 a., he shall, within a reasonable
4 time after the termination of such inspection or investigation,
5 notify the employer or owner by certified mail of the penalty,
6 if any, proposed to be assessed under section 26 and that the em-
7 ployer or owner has 15 working days within which to notify the
8 commissioner that he wishes to contest the citation or proposed
9 assessment of penalty. If, within 15 working days from the receipt
10 of the notice issued by the commissioner the employer or owner
11 fails to notify the commissioner that he intends to contest the
12 citation or proposed assessment of penalty, and no notice is filed by
13 any employee or representative of employees under subsection c.
14 within such time, the citation and the assessment as proposed shall
15 be deemed a final order of the commissioner and not subject to
16 review by any court or agency.

17 b. If the commissioner has reason to believe that an employer
18 or owner has failed to correct a violation for which a citation has
19 been issued within the period permitted for its correction (which
20 period shall not begin to run until the entry of a final order by the
21 commissioner in the case of any review proceedings under this
22 section initiated by the employer or owner in good faith and not
23 solely for delay or avoidance of penalties), the commissioner shall
24 notify the employer or owner by certified mail of such failure
25 and of a penalty proposed to be assessed under section 26 by reason
26 of such failure, and that the employer or owner has 15 working
27 days within which to notify the commissioner that he wishes to
28 contest the commissioner's notification or the proposed assessment
29 of penalty. If, within 15 working days from the receipt of
30 notification issued by the commissioner, the employer or owner
31 fails to notify the commissioner that he intends to contest the
32 notification or proposed assessment of penalty, the notification

33 and assessment, as proposed, shall be deemed a final order of the
34 commissioner and not subject to review by any court or agency.

35 c. If any employer or owner notifies the commissioner that he
36 intends to contest the citation issued under section 18 a. or notifica-
37 tion issued under subsection a. or b. of this section, or if, within
38 15 working days of the issuance of a citation under section 18 a.,
39 any employee or representative of employees files a notice with the
40 commissioner alleging that the period of time fixed in the citation
41 for the abatement of the violation is unreasonable, the commis-
42 sioner shall immediately advise a hearing examiner of such notifica-
43 tion and the hearing examiner shall afford an opportunity for a
44 hearing (in accordance with the Administrative Procedure Act
45 (C. 52:14B-1 et seq.) and such additional procedural review rules
46 as may be promulgated hereunder). The hearing examiner shall
47 thereafter issue an order, based on findings of fact, affirming,
48 modifying or vacating the commissioner's citation or proposed
49 penalty, or directing other appropriate relief, and such order shall
50 become final 30 days after its issuance. Upon a showing by an
51 employer or owner of a good faith effort to comply with the abate-
52 ment requirements of a citation, and that abatement has not been
53 completed because of factors beyond his reasonable control, the
54 commissioner, after an opportunity for a hearing as provided in
55 this subsection, shall issue an order affirming or modifying the
56 abatement requirements in such citation. The rules of procedure
57 prescribed by the commissioner shall provide affected employees
58 or representatives of affected employees an opportunity to partici-
59 pate as parties to hearings under this subsection.

1 20. Judicial review of enforcement.

2 a. Any person adversely affected or aggrieved by a final order
3 of the commissioner under subsection c. of section 19 may obtain
4 a review of such order in the Appellate Division of the New Jersey
5 Superior Court by filing in such court within 45 days following the
6 issuance of such order a written petition praying that the order
7 be modified or set aside. The commencement of proceedings under
8 this subsection shall not, unless ordered by the court, operate as
9 a stay of the commissioner's final order.

10 b. No objection that has not been urged before hearings by the
11 commissioner shall be considered by the court, unless the failure
12 or neglect to urge such objections shall be excused because of
13 extraordinary circumstances. The findings of the commissioner
14 after such hearings with respect to questions of fact, if supported
15 by substantial evidence on the record considered as a whole, shall
16 be conclusive. If any party shall apply to the court for leave to

17 adduce additional evidence and shall show to the satisfaction of the
18 court that such additional evidence is material and that there were
19 reasonable grounds for the failure to adduce such evidence in the
20 hearing before the commissioner, the court may order such addi-
21 tional evidence to be taken before the commissioner and to be made
22 part of the records. The commissioner may modify his findings as
23 to the facts, or make new findings, by reason of additional evidence
24 so taken and filed, and shall file such modified or new findings, which
25 findings with respect to questions of fact, if supported by sub-
26 stantial evidence on the record considered as a whole, shall be con-
27 clusive and his recommendations, if any, for the modification or
28 setting aside of his original order.

29 c. If no petition for review, as provided in subsection a., is filed
30 within 45 days after the service of the commissioner's final order,
31 the commissioner's findings of fact and final order shall be con-
32 clusive in connection with any petition for enforcement which is
33 filed by the commissioner after the expiration of such 45-day period.
34 In any such case, as well as in the case of any noncontested citation
35 or notification by the commissioner which has become his final order
36 under subsection a. or b. of section 19, the clerk of the court, unless
37 otherwise ordered by the court, shall forthwith enter a decree en-
38 forcing the order and shall transmit a copy of such decree to the
39 commissioner and the employer or owner named in the petition.
40 In any contempt proceeding brought to enforce a decree of the
41 Superior Court entered pursuant to this subsection or subsection a.,
42 the Superior Court may assess the penalties provided in section 26,
43 in addition to any other available remedies.

44 d. Where a penalty has been assessed or imposed by the com-
45 missioner under section 19, but not paid, and no timely appeal is
46 taken by an affected party under subsection a. of this section, such
47 penalty may be collected or enforced by a summary civil proceeding
48 pursuant to the New Jersey Penalty Enforcement Law. (N. J. S.
49 2A:58-1 et seq.)

1 21. Employee discharge and right of review.

2 a. No person shall discharge or in any manner discriminate
3 against any employee because such employee has filed any com-
4 plaint or instituted or caused to be instituted any proceeding under
5 or related to this act or has testified or is about to testify in any
6 such proceeding or because of the exercise by such employee on
7 behalf of himself or others of any right afforded by this act.

8 b. Any employee who believes that he has been discharged or
9 otherwise discriminated against by any person in violation of this
10 section may, within 30 days after such violation occurs, file a com-

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30 and testify and produce like documentary evidence before a hearing
31 examiner. Witnesses whose depositions are taken under this sub-
32 section and the persons taking such depositions shall be entitled to
33 the same fees as are paid for like services in the courts of the State.

1 23. Procedures to counteract imminent dangers.

2 a. The Chancery Division of the New Jersey Superior Court shall
3 have jurisdiction, upon petition of the commissioner, to restrain
4 any conditions or practices in any place of employment which are
5 such that a danger exists which could reasonably be expected to
6 cause death or serious physical harm immediately or before the
7 imminence of such danger can be eliminated through the enforce-
8 ment procedures otherwise provided by this act. Any order issued
9 under this section may require such steps to be taken as may be
10 necessary to avoid, correct, or remove such imminent danger and
11 prohibit the employment or presence of any individual in locations
12 or under conditions where such imminent danger exists, except in-
13 dividuals whose presence is necessary to avoid, correct, or remove
14 such imminent danger or to maintain the capacity of a continuous
15 process operation to resume normal operations without a complete
16 cessation of operations, or where a cessation of operations is
17 necessary, to permit such to be accomplished in a safe and orderly
18 manner.

19 b. Upon the filing of any such petition the Superior Court shall in
20 accordance with the Rules of Court have jurisdiction to grant such
21 injunctive relief or temporary restraining order pending the out-
22 come of an enforcement proceeding pursuant to this act, but no
23 temporary restraining order issued without notice shall be effective
24 for a period longer than 5 days.

25 c. Whenever and as soon as an inspector concludes the condi-
26 tions or practices described in subsection a. exist in any place of
27 employment, he shall inform the affected employees and employers
28 of the danger and that he is recommending to the commissioner
29 that relief be sought.

30 d. If the commissioner arbitrarily or capriciously fails to seek
31 relief under this section, any employee who may be injured by
32 reason of such failure, or the representative of such employees,
33 may bring an action in lieu of prerogative writ against the com-
34 missioner in the Superior Court, Law Division, for the county in
35 which the imminent danger is alleged to exist to compel the commis-
36 sioner to seek such an order.

1 24. Confidentiality of trade secrets. All information reported to
2 or otherwise obtained by the commissioner or his representative in
3 connection with any inspection or proceeding under this act which

4 contains or which might reveal a trade secret, as referred to and
5 defined by the Secretary of Labor under the Federal Act, shall be
6 considered confidential for the purposes thereunder, except that
7 such information may be disclosed to other officers or employees
8 concerned with carrying out this act or when relevant in any pro-
9 ceeding under this act. In any such proceeding the commissioner
10 or the court shall issue such orders as may be appropriate to protect
11 the confidentiality of trade secrets.

1 25. Variations, tolerances, and exemptions. The commissioner,
2 on the record and in consultation with the Secretary of Labor, after
3 notice and opportunity for a hearing may provide such reasonable
4 limitations and may make such rules allowing reasonable varia-
5 tions, tolerances, and exemptions to and from any or all provisions
6 of this act as he may find necessary and proper to avoid serious
7 impairment of the national defense. Such action shall not be in
8 effect for more than 6 months without notification to affected em-
9 ployees and an opportunity being afforded for a hearing.

1 26. Penalties.

2 a. Any employer or owner who willfully or repeatedly violates
3 the requirements of section 6 of this act, any rule or order pre-
4 scribed and promulgated pursuant to this act, may be assessed a
5 civil penalty for not more than \$10,000.00 for each violation.

6 b. Any employer or owner who has received a citation for a
7 serious violation of the requirements of section 6 of this act, of any
8 rule or order prescribed and promulgated pursuant to this act, shall
9 be assessed a civil penalty of up to \$1,000.00 for each such violation.

10 c. For purposes of this section, a serious violation shall be
11 deemed to exist in a place of employment if there is a substantial
12 probability that death or serious physical harm could result from
13 a condition which exists, or from one or more practices, means,
14 methods, operations, or processes which have been adopted or are
15 in use, in such place of employment unless the employer or owner
16 did not, and could not with the exercise of reasonable diligence,
17 know of the presence of the violation.

18 d. Any employer or owner who has received a citation for a
19 violation of the requirements of section 6 of this act, of any rule
20 or order prescribed and promulgated pursuant to this act, and such
21 violation is specifically determined not to be of a serious nature,
22 may be assessed a civil penalty of up to \$1,000.00 for each such
23 violation.

24 e. Any employer or owner who fails to correct a violation for
25 which the citation has been issued under section 18(a) within the

26 period permitted for its correction (which period shall not begin to
27 run until the date of the final order of the commissioner in the case
28 of any review proceedings under section 19 initiated by the em-
29 ployer or owner in good faith and not solely for delay or avoidance
30 of penalty), may be assessed a civil penalty of not more than
31 \$1,000.00 for each day during which such failure or violation
32 continues.

33 f. Any employer or owner who willfully violates any rule or
34 order prescribed and promulgated pursuant to this act, and that
35 violation caused death to any employee, shall, upon conviction, be
36 punished by a fine of not more than \$10,000.00 or by imprisonment
37 for not more than 6 months, or by both; except that if the convic-
38 tion is for a violation committed after a first conviction of such
39 person, punishment shall be by a fine of not more than \$20,000.00
40 or by imprisonment for not more than 1 year, or by both.

41 g. Any person who gives advance notice of any inspection to be
42 conducted under this act, without authority from the commissioner
43 or his designees, shall, upon conviction, be punished by a fine of
44 not more than \$1,000.00 or by imprisonment for not more than 6
45 months, or by both.

46 h. Whoever knowingly makes false statement, representation, or
47 certification in any application, record, report, plan, or other docu-
48 ment filed or required to be maintained pursuant to this act shall,
49 upon conviction, be punished by a fine of not more than \$10,000.00,
50 or by imprisonment for not more than 6 months, or by both.

51 i. Any employer or owner who violates any of the posting re-
52 quirements, as prescribed under the provisions of this act, shall be
53 assessed a civil penalty of up to \$1,000.00 for each violation.

54 j. The commissioner shall have authority to assess all civil
55 penalties provided in this section, giving due consideration to the
56 appropriateness of the penalty with respect to the size of the
57 business of the employer being charged, the gravity of the viola-
58 tion, the good faith of the employer, and the history of previous
59 violations. A record of such assessments shall be kept by the com-
60 missioner and shall be open to public inspection.

61 k. All penalties collected under this act shall be paid to the com-
62 missioner for remittance to the State Treasurer of New Jersey.

1 27. Public employee safety program.

2 a. It shall be the responsibility of the head of each State agency,
3 county, municipality, or other political subdivision of the State to
4 establish and maintain an effective and comprehensive safety and
5 health program in accordance with the rules promulgated by the
6 commissioner under this act. The head of each agency, county,

7 municipality, or other political subdivision shall (after consultation
8 with representatives of the employees thereof):

9 (1) Provide safe and healthful places and conditions of employ-
10 ment in accordance with the rules promulgated by the commissioner
11 under this act;

12 (2) Acquire, maintain, and require the use of safety equipment,
13 personal protective equipment, and devices reasonably necessary
14 to protect employees;

15 (3) Provide the commissioner with access to any State agency
16 or political subdivision place of employment for the purposes of
17 inspecting employee safety and health conditions and developing
18 techniques or practices to correct any such condition found in
19 violation of the rules promulgated under this act;

20 (4) Keep adequate records of all occupational injuries and
21 illnesses for proper evaluation and necessary corrective action,
22 which records shall be made available to the commissioner upon
23 written request;

24 (5) Consult with the commissioner with regard to the adequacy
25 as to form and content of records kept pursuant to subsection a.
26 (4) of this section; and

27 (6) Make an annual report to the commissioner with respect to
28 occupational illnesses and injuries and the agency's program under
29 this section.

30 b. Subject to the approval of the commissioner and within 3
31 years of the effective date of this act, any State agency, county,
32 municipality, or other political subdivision may develop and imple-
33 ment an occupational safety and health plan which shall be as effec-
34 tive as the program established by the State under this act.

35 c. The commissioner in his annual report to the Governor shall
36 include a summary of the reports submitted by the various State
37 agencies, counties, municipalities, and other political subdivisions.

1 28. Research and statistics.

2 a. The commissioner shall seek the aid of the appropriate State
3 and Federal agencies in securing information regarding research,
4 experiments, and demonstrations for the purpose of study and
5 development of rules and for developing criteria dealing with toxic
6 materials and harmful agents and substances.

7 b. Nothing in this act shall be deemed to authorize or require
8 medical examination, immunization or treatment for those who
9 object thereto on religious grounds, except where such is necessary
10 for the protection of the health or safety of others.

11 c. It shall be the responsibility of the commissioner to secure and
12 maintain any statistical information required for the administra-

13 tion of this act and to meet the requirements of the Secretary of
14 Labor under the Federal Act.

1 29. Training and education in safety and health.

2 a. The commissioner shall establish and conduct such education
3 and training programs as are necessary to provide skilled man-
4 power to carry out the provisions of this act.

5 b. The commissioner is authorized to provide such services,
6 assistance, and training of employers and employees as may prove
7 necessary to carry out their duties and responsibilities under this
8 act and to develop safety programs, methods, and procedures to
9 carry out such responsibilities.

1 30. Publication and availability of records.

2 a. Whenever the commissioner promulgates a rule or issues a
3 variance, it shall be published in the New Jersey Register, and all
4 orders and decisions together with reasons therefor shall be kept
5 on record and be made available to the public by the commissioner.

6 b. No departmental personnel shall be required to give testimony
7 in any civil action whatsoever, regarding any opinion formed as
8 the result of an inspection made or enforcement action instituted
9 by the commissioner; except that this provision shall not apply to
10 such actions as may be brought by the commissioner for the enforce-
11 ment of this act.

12 c. Any person may secure copies of any photograph, sketch, or
13 written document in departmental inspection and enforcement files,
14 provided that such documents do not contain trade secret informa-
15 tion or opinions and recommendations of agency personnel for
16 intradepartmental use and further provided that such documents
17 are not part of an ongoing investigation or enforcement action.

1 31. Annual report. The commissioner shall prepare and submit
2 to the Governor an annual report concerning the department's
3 application of this act, progress toward achievement of its purpose,
4 proposed changes to be made in the field of occupational safety and
5 health, and any other information relevant to evaluating and de-
6 veloping the State Program.

1 32. Separability. If any provision of this act, or the application
2 of such provision to any person or circumstance, shall be held in-
3 valid, the remainder of this act, or the application of such a pro-
4 vision to persons or circumstances other than those as to which
5 it is held invalid, shall not be affected thereby.

1 33. Rules adopted pursuant to the provisions of any act repealed
2 and superseded by this act shall remain in force and effect for 5
3 years following the effective date of this act or until sooner re-
4 placed by rules promulgated under this act.

- 1 34. The following acts and parts of acts are repealed: P. L. 1960,
 2 c. 55 (C. 21:1A-135 through 21:1A-138), P. L. 1950, c. 139
 3 (C. 21:1B-1 through 21:1B-8), R. S. 21:2-8 through 21:2-20,
 4 R. S. 34:2-31 through 34:2-35, P. L. 1962, c. 45 (C. 34:5-166
 5 through 34:5-181), P. L. 1948, c. 249 (C. 34:6-47.1 through
 6 34:6-47.9), P. L. 1966, c. 261 (C. 34:6-47.7a), P. L. 1954, c. 197
 7 (C. 34:6-98.1 through 34:6-98.18), P. L. 1966, c. 112 (C. 34:6-119.1
 8 through 34:6-119.6), P. L. 1965, c. 154 (C. 34:6A-1 through
 9 34:6A-24).
- 1 35. This act shall take effect 120 days after enactment.

STATEMENT

The purpose of this bill is to permit the State of New Jersey to continue regulation and enforcement power over the field of occupational safety and health for the protection of all employees in this State.

Under the federal Williams-Steiger Occupational Safety and Health Act of 1970, P. L. 91-596, 84 Stat. 1590, 29 U. S. C. 651 et seq., the states were given the choice of conceding total jurisdiction over the occupational safety and health field to the Federal Government or of resuming regulation and enforcement in partnership with the Federal Government through the formulation and adoption of a State Plan, of which this legislation is an essential part.

The New Jersey State Plan was approved by the Federal Government on January 26, 1973. Federal approval will continue as long as the State Plan and its implementation are considered by the United States Secretary of Labor to be as effective as the federal regulatory and enforcement program in providing safe and healthful employment and places of employment in this State.

Since 1885, the Legislature has sought to reduce and eliminate loss of life and health hazards arising out of work situations through various statutes and programs. The State currently has more than 100 technical personnel occupied with carrying out the Legislature's policy in this field.

This bill will provide comprehensive legislation to replace existing State statutes and resume regulatory and enforcement power in this field, expand coverage of the law from 1.4 million workers to 3 million workers in New Jersey, and provide for research, information, education, training and technical assistance to employers and employees of this State. The State will receive federal grants of up to 50% of the total operational cost of the program's implementation.

SENATE, No. 716

STATE OF NEW JERSEY

INTRODUCED JANUARY 28, 1974

By Senators MERLINO, BEDELL and MARTINDELL

Referred to Committee on Labor, Industry and Professions

AN ACT to assure safe and healthful working conditions for the working men and women of New Jersey; by authorizing enforcement of rules developed under the act, thereby reassuming that responsibility from the United States Government which had preempted the occupational safety and health field in the Williams-Steiger Act of 1970; by providing comprehensive legislation to replace existing State statutes in this field; by providing for research, information, education, training and technical assistance in this field; and by supplementing Title 34 of the Revised Statutes and repealing sundry acts and parts of acts.

(The language of this bill is identical
to that of Assembly No. 833)

ASSEMBLYMAN CHRISTOPHER J. JACKMAN (Chairman):

Good morning, ladies and gentlemen, on behalf of the members of the Assembly Labor Committee, I welcome you here this morning.

Following are the members of the Committee that are present with me: To my right is Assemblyman Thomas Gallo; to my left, Assemblyman Patero and Assemblywoman Totaro.

In response to all of the requests from all over the State, this hearing has been called on Assembly Bill 833 and Senate Bill 716. Both bills provide for the State to recapture jurisdiction from Washington for the administration and the enforcement of the Occupational Safety and Health Standards affecting virtually all private and public employees in New Jersey.

I hope that the hearing today will shed some new light on the subject which already has been extensively debated by this Committee in open session.

When your name is called, please come to the front desk with your testimony. It would be most helpful for the purpose of assembling an official transcript of this hearing, if you have a written statement to give at the same time that you present your comments. In the event that you have a written statement, please leave it with our court stenographer. Also anyone who has not already expressed an interest in speaking before the Committee and wishes to do so, will you please see our Committee Aide, Mr. Ben-Asher, who is sitting to my right.

In view of the number of people who want to speak and in view of the fact that we have an Assembly session this morning, periodically members of the Committee will leave and go to vote on certain legislation. I have made arrangements to this effect with the Speaker of the House. I am going to ask everyone to hold his remarks to no more than ten minutes. If you have a written statement, try to

give us a brief resume of it and your entire statement will be made part of the official record.

We have with us today Commissioner of Labor Joseph A. Hoffman, who has other duties to perform today in the conduct of his position. So I will give the Commissioner the opportunity to be the first witness.

J O S E P H A. H O F F M A N: Thank you, Mr. Chairman and members of the Committee, for inviting me here today to comment on S 716 and A 833. These bills enable the State of New Jersey to maintain jurisdiction over the safety and health of her working men and women subject to federal minimum standards.

In the event this legislation is not enacted by December 31, 1974, the Federal Government will preempt the field of occupational safety and health. It is my intention to define for you the impact that such preemption would have on our workers and employers.

As you know, under the Williams-Steiger Occupational Safety and Health Act of 1970, the Federal Government entered the field of occupational safety and health. Under certain circumstances, the states were afforded an opportunity to assume responsibility for the development of occupational safety and health standards under state plans to be approved by the U. S. Secretary of Labor. Under these plans the state standards had to be at least as effective as federal standards. However, they could also be more effective. After approval of a state plan, the Federal Government would monitor the operation of the plan to insure its effectiveness. Training, educational and statistical programs would continue to be operated by the Federal government; and the National Institute of Occupational Safety and Health would continue to conduct research and recommend standards of the Secretary of Labor.

New Jersey did submit a plan to the Federal Government and it was approved on January 26, 1973. New Jersey Senate Bill No. 716 and Assembly Bill No. 833 are an essential part of the New Jersey State Plan. If this plan is not enacted, the Federal Government will withdraw its approval of the New Jersey plan and the Federal Government will solely administer occupational safety and health under the federal statute.

What then are the ramifications of federal preemption.

First, the New Jersey state plan provides substantially greater protection than the federal OSHA program.

Federal safety standards are not presently as strong as are the State's. By adopting a state plan, New Jersey would reserve the right to set higher standards where higher standards were necessary in the public interest. But if the Federal Government preempts, New Jersey's higher standards would be nullified.

New Jersey's proposed state plan includes 60 regulations. Thirteen of these deal with hazards which are not covered by existing federal regulations, and nine others are substantially stricter than similar federal regulations. The remaining state regulations, of course, are as strict as federal regulations.

Mr. Chairman, in the interest of time, I would just like to list the areas where New Jersey's regulations are stronger, but the statement which we are submitting has in some detail just how New Jersey's regulations are stronger. Those areas are as follows:

(Commissioner Hoffman read the headings of the numbered paragraphs, but the complete statement, as submitted, follows.)

1. Work in Confined Spaces. A confined space refers to any working space which has inadequate ventilation and exit facilities, such as reactors used in the chemical industry, large tanks, vats and sewers. New Jersey would provide for "stand-by" employees and monitoring for all entry operations involving confined spaces. The Federal Government requires stand-by employees only for emergency entry, or when respiratory protection is required for entry in the judgment of the employer. In addition, New Jersey would regulate all work situations in and around confined spaces. The Federal Government's regulations cover only confined spaces for welding and cutting operations, ventilation of tanks for environmental control and confined spaces requiring respiratory equipment. New Jersey' standards in this area are of particular concern to workers in our chemical industries, and, as noted, would fall if the Federal Government preempted.

2. Seasonal Farm Labor (Including Migrants). Overall, New Jersey's proposed migrant labor standards are much stronger and more comprehensive than the Federal Government's. New Jersey's regulations require flush toilets in camps whereas the Federal Government only requires privies. New Jersey requires a second means of exit in migrant housing, whereas the federal regulations only require one. New Jersey requires fire extinguishing equipment in camp facilities, while the federal regulations do not. In each case, the stronger state regulation would be preempted by the weaker federal standard in the absence of a state plan. As recently as two weeks ago, proposed revisions of federal OSHA standards for employment related housing made news in New Jersey because these proposed revisions constituted a substantial step backwards in the already weak federal OSHA standards for housing migrant workers.

3. Means of Egress. New Jersey has proposed comprehensive rules governing exit facilities in industrial structures, and the regulations become tougher as the degree of hazard associated with the industrial activity increases. For example, New Jersey requires specific minimum travel distances to plant exits, while the Federal Government does not. New Jersey will establish minimum exit door requirements according to occupancy loads, while the Federal Government does not. New Jersey will specify much stronger design requirements for exit doors than the requirements contained in the federal regulations. Overall, this area of regulation is extremely important for workers who work with flammable or explosive materials.

4. Hazardous Materials. This area of regulation covers labeling, warning, and storage requirements for firms using combustible or toxic materials such as hydrogen sulfide, benzene, hexane, methanol, and gasoline. State regulations on labeling and warning signs will be far more comprehensive than federal requirements. The state will issue stronger rules for safe storage of hazardous materials, including requirements on the quantities of flammable materials that may be stored in large tanks, and the distance separating these tanks. Our regulations will afford much greater protection to citizens living near the large "tank farms" owned by petroleum and chemical firms in New Jersey.

5. Sanitation. New Jersey will not permit privies in permanent places of employment; flush toilets are required. The Federal Government would allow privies.

6. Liquefied Natural Gas. New Jersey will provide for strict regulation of the handling and storage of liquefied natural gas. The Federal Government has no regulation whatsoever in this area. Tough safety rules here are critical, since New Jersey anticipates potentially large shipments of LNG from abroad.

7. Machine Guarding. Many disabling occupational accidents are caused by improperly designed or maintained machines. New Jersey will require the safe design, installation, operation and maintenance of conveyer equipment, whereas the Federal Government will have no such regulations. New Jersey will require similar controls over extractors and centrifuges, another source of crippling injuries.

8. Elevators, Escalators, and Man Lifts. New Jersey has comprehensive design, installation, and maintenance regulations covering elevators; the Federal Government has not yet proposed any such regulations. New Jersey would prohibit the use of "man lifts" altogether because of the serious accidents associated with this equipment in the past. Federal standards permit man lifts, and thus expose workers to unnecessary and serious hazards.

9. Workplace Design. New Jersey will regulate on a comprehensive basis, the design and construction of all new industrial facilities including initial review and comment on architectural drawings and blueprints. The Federal Government has no such workplace design requirements. New Jersey thus will correct design deficiencies before a building is constructed, when safety corrections may be made at minimum cost.

10. Construction Safety. New Jersey standards provide far better protection to construction workers than the federal standards. For example, New Jersey will require workers operating more than twenty-five feet above the ground to be "tied off", or protected by nets. The comparable federal regulation is so vague as to be unenforceable. On excavations without bracing, New Jersey requires a slope no greater than one-on-one, while the Federal Government permits a more dangerous two-on-one slope depending on soil conditions. The state requires a permit system for use of explosives including dynamite to protect construction workers and the public from mishandling of explosives by irresponsible persons. The Federal Government has no such permit system, and thus would provide far less protection to the public in this critical area.

11. Agricultural Workers. The state requires restricted use of certain pesticides which may endanger the health of agricultural workers. The Federal Government has no such regulation.

12. Public Employee Coverage. The federal OSHA program specifically excludes public employers (state and local government, school boards, etc.). New Jersey's plan does cover public employees, and thus extends protection of the law to approximately 300,000 additional workers in New Jersey. This protection is particularly important for public employees who work in institutions, hospitals, road and street projects, maintenance operations and recreational areas.

There is a final consideration with regard to standards. Periodically, medical researchers discover additional chemicals and other substances in the industrial environment which are toxic, disabling and even fatal to workers. Preemption by the Federal Government of rule-making power will prevent the state from acting to control these hazards which have not yet been discovered. In other words, should an industrial health hazard arise in New Jersey, we would have to await the cumbersome federal regulatory process to react on a national basis before our workers could be protected.

Second, the state enforcement staff is substantially larger and better trained than the federal enforcement staff planned for New Jersey. At the present time, the Federal Government has 12 OSHA Enforcement Officers in New Jersey. We are aware of 12 more in school. Therefore, in the immediate future only 24 federal personnel will be available in our state. We anticipate that over the next few years the Federal Government will assign at the most 40 OSHA Compliance Officers to New Jersey if the state chooses federal preemption. Currently, New Jersey has 140 enforcement personnel assigned to the program, and this number will be expanded as OSHA coverage is expanded under the state plan. In addition, because of New Jersey's long involvement in the regulation of occupational safety (the state has had a program since 1885), our enforcement personnel have developed expertise and specialization which could not be matched by federal officers. For example, the state has a team of inspectors specializing in migrant labor problems. Federal enforcement officers have industrial engineering backgrounds; few have expertise in migrant problems.

In reaching your decision, it is instructive to look to Pennsylvania, an industrialized state that has recently been preempted.

Pennsylvania's experience is demonstrative of federal preemption in action. Early 1973, the Federal Government took over OSHA enforcement in Pennsylvania. Since that time, the number of Pennsylvania workers suffering job-related injuries rose 18 percent over the previous year. Paul J. Smith, Secretary of the Pennsylvania Department of Labor and Industry, advised that in virtually all the 55 industry categories, both the number and rate of accidents increased last year. In fact, Secretary Smith indicates that lost-time injuries, including fatalities, reached 134,866 in 1973 compared to 113,657 in 1972. Last year's total was the highest recorded since the Department began compiling the statistics.

On those statistics, if I can divert from the text for a moment, in fairness, it is interesting to point out that fatalities did go down in that year, but fatalities, as most people in the occupational safety and health area can tell you, are really not a barometer of how effective a program you have. You may have a maximally effective program and one bad accident involving numerous fatalities may throw your entire program off kilter. What is important statistically is the number of accidents. That, I think, is a fair barometer of whether or not a program is effective. And in Pennsylvania, while their work force went up only 3 percent in the one year of preemption, accidents went up 18 percent. Higher injury rates were especially concentrated in the construction industries, fabricated metal industry, machinery, and transportation equipment. The Pennsylvania Secretary of Labor and Industry called these increases "deplorable" and the Pennsylvania AFL-CIO agreed.

During 1973, Secretary Smith indicated that there were only 36 federal employees working on OSHA in Pennsylvania; at the present time this number has increased to about 50. However, in the Plan that Pennsylvania submitted it was estimated that about 400 inspectors would be required to do the kind of job that the OSHA Plan called for.

Third, federal preemption could mean the loss of jobs for approximately 200 state employees.

If the Federal Government preempts enforcement, New Jersey has no assurance that almost any of our 200 employees presently assigned to occupational safety would be transferred to the Federal payroll. We have no assurance that those who are transferred could transfer their state pension rights into the federal pension program. Finally, even if all of the federal slots planned for New Jersey (approximately 40) were filled with state employees, the remaining state employees could not be accommodated, and would eventually have to be transferred to some other state payroll, or terminated.

Federal preemption would permit the state to continue regulating occupational safety areas not yet covered by federal regulations, but these state regulations would fall as soon as a similar federal regulation was promulgated. Eventually, as federal OSHA regulations developed, the state would be completely preempted from the field of occupational safety and health.

It will be necessary to maintain a maximum of 40 positions for a while, in order to regulate those areas not covered as yet by Federal regulation.

Fourth, adoption of a state plan will ultimately have a minimal impact on the state budget.

It is estimated that the total cost of the OSHA Plan being administered by the State would be approximately \$3,000,000, 50 percent of which would be paid by the Federal Government.

The remaining state share of \$1,500,000 does not, however, represent a net cost; it is estimated that revenues from permit charges and fines and penalties which go into the general State Treasury will more than offset the State's cost share. Thus, a state plan would impose no overall additional burden on New Jersey taxpayers.

It should be noted that even if New Jersey is preempted the cost to the State of regulating those areas not as yet covered by federal regulations, as indicated earlier, would be approximately \$400,000.

Twenty-six states, as listed on the attached summary, have passed enabling legislation which will permit their states to administer an OSHA plan.

I appreciate the opportunity to present these facts to you.

(Attachments to Commissioner Hoffman's statement can be found beginning on page 1 X.)

ASSEMBLYMAN JACKMAN: Thank you, Commissioner.
Are there any questions by the Committee members?

ASSEMBLYWOMAN TOTARO: As to the cost factor, is that a conservative estimate of our share, the million and a half?

COMM'R HOFFMAN: No, that is roughly what the cost would be. I think that is a deliberative estimation.

ASSEMBLYWOMAN TOTARO: Thank you.

ASSEMBLYMAN JACKMAN: How long do you expect it might take before the effect of the Federal OSHA-type program could be completed by your department?

COMM'R HOFFMAN: It shouldn't take long. I don't see any major changeover. The training has been underway

since the Williams-Steiger Bill has been passed for our people. We have the necessary staff. The standards are ready to go. They have been written. So in terms of an enactment of a State plan and the actual utility of a State plan, it would be, I think, a matter of days or at the most weeks.

ASSEMBLYMAN JACKMAN: Do I understand there is a training program now in progress?

COMM'R HOFFMAN: Yes, there is, Mr. Chairman. There has been for some time. I think two days out of every six weeks our inspectors have been taking full-time training. As you know, they are already trained in the general field. The only training necessary is to accommodate their existing expertise and training to the new Federal standards, Federal programs and Federal procedures. It is as if the State Police were nationalized. They certainly have basic training in police techniques. They have to learn Federal approaches, Federal law. This is basically what we are doing now.

ASSEMBLYMAN JACKMAN: One other question: Have you given any thought as to how the State can enforce compliance by the local jurisdictions of safety standards now required by the act?

COMM'R HOFFMAN: Well, we have given it some thought. As you know, the only way that you could bring safety standards to public employees would be via a State plan because if the Federal government preempts, they don't cover public employees and then we wouldn't have the apparatus to cover public employees.

I imagine since fines generally are out - you couldn't fine a local government official - it would be illegal - the glare of publicity would be equally effective as one method for making sure that they approved the State plan. In the bill there is a provision that a municipality

could develop its own State plan, much the same way that New Jersey can develop a State plan with the Federal government - the same kind of an evolutionary process.

ASSEMBLYMAN LITTELL: Commissioner Hoffman, you point out in your statement on page 8 the statistics from the State of Pennsylvania where they have been preempted by the Federal government. How does that compare with New Jersey for the same period of time?

COMM'R HOFFMAN: I am going to have to supply the Committee with the accident statistics from our department. I don't have those with me.

ASSEMBLYMAN LITTELL: The other part of that question is: If there is a difference in Pennsylvania, is it reflected because of a difference in reporting procedures under the OSHA plan or is it, in fact, an actual difference?

COMM'R HOFFMAN: That is something I can't answer directly, except to tell you that I discussed it with the Pennsylvania Secretary of Labor and it was his opinion that the increase in accidents was directly related to the lack of a forceful OSHA program and the lack of personnel within his state.

ASSEMBLYMAN LITTELL: It has been stated by both business and labor that a Federal program, uniform across the country, would be easier to enforce and easier to handle and operate, especially for companies that operate as multi-state operators and for unions that operate as multi-state unions. They would not have to have different standards in each state. Can you address yourself to that situation?

COMM'R HOFFMAN: Yes, I can. Assemblyman, I think you put your finger on the dilemma that is facing almost everybody who is involved in occupational safety and health, from the Legislature, to commissioners, to business and to labor. It is my belief when OSHA was passed that that was the spirit and the intent of Congress. It is my belief

that a Federal program, properly instituted, properly operated, would be better for the country. It would be better for labor - it would be better for management. I think it is very clear the problem that I am faced with and the dilemma I am faced with. I guess it was best demonstrated in the recent oversight hearings that Senator Williams conducted in Washington. Those oversight hearings demonstrated clearly that the Federal Department of Labor is not doing its job under OSHA, that this administration and the administration that immediately preceded it is not doing its job under that bill. As a result, I have a philosophical feeling that you are correct that OSHA is better if it is run nationally, and that conflicts with my practical feeling that Federal OSHA at this point in time cannot do the job in New Jersey that New Jersey is able and willing to do. As a result, I have reported to you facts as I see them which leads me to believe as a practical matter New Jersey is better equipped in this year 1974 and in 1975 to protect its workers and to do a better job both for labor and industry in occupational safety and health than is the Federal government.

Had that bill been operated and executed in the way Congress passed it, had that intent been made a reality and the Federal government done what it was supposed to have done, I don't think I would have taken this position today.

ASSEMBLYMAN LITTELL: Then would it be correct to state that it is your position and the position of the Byrne administration that you favor one or both of these bills to be passed so that we have a State program?

COMM'R HOFFMAN: I have to make clear, it is not the position of the Byrne administration; it is my position. I don't know what the Governor's position is on this subject.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN JACKMAN: One further question:
Commissioner, to what extent are serious violations followed up presently by the State?

COMM'R HOFFMAN: They are followed up carefully and well. The distinctions in operations between the Federal program and the present program are these: As you know, under OSHA, there is a first-instance violation procedure so that when a violation is found by an inspector there is an immediate violation citation and a fine imposed. In New Jersey, there is a different procedure whereby the violation is called to the attention of the violator and he is given x amount of days to cure that violation. Then there is an immediate follow-up. To the best of my knowledge, as confirmed by the statistics that I have available to me and also by my physical inspection and review, all of those are followed up. We can provide the Committee with all the statistics it needs on our inspection procedures.

ASSEMBLYMAN JACKMAN: Are there any further questions? (No response.) Thank you, Commissioner.

COMM'R HOFFMAN: Thank you, Mr. Chairman.

ASSEMBLYMAN JACKMAN: Mr. Richard Andree, Associate Assistant Regional Director of OSHA, will be our next witness.

Ladies and gentlemen, I again want to remind you that periodically there will be some members of the Committee leaving because of other meetings and to attend the Assembly session. But we will give everybody an opportunity to speak. I have been more or less excused from voting to a degree and will continue the hearing.

Mr. Andree, you may proceed.

R I C H A R D F. A N D R E E: Thank you very much, Mr. Chairman.

I am here as a representative of the Occupational Safety and Health Administration.

I am presently the Associate Assistant Regional Director for Federal and State Operations for Region 2, which includes the State of New Jersey.

First let me thank you, Mr. Chairman and members of this Committee, for permitting me an opportunity to address a very important program that affects the employers and employees of this great State.

With the advent of OSHA, we are on the threshold of a new era in safety and health. I will not detail the background of how and why OSHA came about, but I would like to provide some perspective for my remarks and give you my appraisal of OSHA right at the beginning.

First - I think the basic purpose of providing safe and healthful working conditions, to the maximum degree feasible, for every working man and woman must be one of the highest priority goals of this country and of this state.

Second - I think and, in fact, know that the people administering the Federal Act and the New Jersey State Plan are sincerely seeking to achieve the safety and health goals that the Act established.

Third - I know there are some problems in the administration of the program that must be resolved to enable federal and state governments, and industry working together, to achieve these stated goals.

Fourth - OSHA and its approach to occupational safety and health are here to stay, and

Fifth - not only are we going to continue to have OSHA, but we are going to see more of it and, in the future, there will be a growing emphasis on health as opposed to safety.

Now, how does this affect the New Jersey Occupational Safety and Health Plan and the issue at hand, proposed legislation to carry out the provisions of the State Plan, which has been approved by OSHA?

Quite simply, the issue at hand is a concept - "at least as effective as" - this phrase came into being during legislative proceedings prior to passage of the OSH Act of 1970. Although admittedly the Act was passed to remedy shortcomings in certain state administration of safety and health programs by establishing uniform standards and enforcement means, Congress recognized the need to permit the states to operate their own program.

But the record of debate reveals it was not Congress's intent to require state programs in the "mirror image" of the Federal program. Congress believed rules for developing state programs should be flexible to allow consideration of local problems, conditions and resources.

New Jersey has submitted what I believe is a superior plan and enabling legislation. This belief is supported by the fact that the Assistant Secretary of Labor for Occupational Safety and Health, Mr. John Stender, approved the New Jersey Plan in January of 1973 and, subsequently, approved a 50% grant to carry out the current enforcement program while developmental steps are taken to bring the New Jersey program to the "effective as" criteria.

The enabling legislation before you is the key item in permitting New Jersey to carry out its responsibilities to employers and employees of this state.

Without this legislation and, I must add, timely action, New Jersey will be preempted from serving its citizens.

What are the advantages of State occupational safety and health administration rather than federal enforcement?

The State plan concept as contained in the Occupational Safety and Health Act of 1970 encourages the States (both verbally and monetarily) to assume the fullest responsibility for the administration and enforcement of State occupational safety and health laws and standards which are at least as effective as the Federal program. The advantages resulting from such a partnership accrue to employers and employees as well as to the immediate participants, the Federal and State governments.

First, what are the advantages to the Federal government? It fosters the New Federalism concept through active partnership with the States. It doubles resources devoted to the program through 50 percent State participation. It makes use of existing national resources; that is, the State's capability to carry out a program.

Secondly, the advantages to the States. As part of the New Federalism, government is brought closer to the people it protects and regulates. On-going State programs are expanded and upgraded with Federal funds. It maintains State autonomy with freedom to tailor programs to specific needs of the State. Creativity and innovation within a set framework are encouraged. It provides closer cooperation with employers and employees. It avoids dislocation of existing State safety and health capability.

Third, the advantages to employees. It ensures coverage of State and local government workers who are exempt from the Federal Act. It provides greater protection through special standards dealing with local conditions. Greater resources devoted to the program result in more inspectors, more

frequent inspections and follow-ups and more immediate response to complaints, catastrophes, etc. It provides greater opportunity to participate in contested proceedings, hearings on variances, standards, etc., since they are held within the state. And employees are assured of an effective occupational safety and health program through Federal monitoring.

The advantages to the employers. There is more expeditious review of citations and penalties within the State. Issuance of variances at the State level, where responsiveness to local issues and problems can be maximized. It facilitates the direct input by employers into State standards development, resulting in the fullest consideration of local issues and problems. On-site consultation without enforcement action is available. And there is greater governmental awareness of and responsiveness to local conditions and problems.

What are the specific differences between the OSHA and New Jersey State Program? I will only go into a few of these right now. In enforcement, the State plan provides that the State may program its inspections according to parameters which we have set. You have maximum flexibility in the way that the State inspections can be programmed so that you can hit local problems and local conditions which are not of national significance.

Your standards may be different. They have to be "as effective as" but they can be different, again to reflect local conditions.

Consultation. - Currently the Occupational Safety and Health Act that the Federal government operates under does not provide for on-site consultation. This has been one of the major drawbacks of our program. However, state programs do provide for on-site consultation. So an employer who does recognize a problem can get expertise from the State government.

Last, but not least, public employees. - As you know, they are not covered by the Federal program, but under state programs they are covered. It is mandated in Section 18 of the Act.

Very briefly, let me hit two emotional issues, although evidently the entire concept of state plans has become a national emotional issue, unfortunately. One deals with standards. Some of our people, some of our supporters and some of our detractors, have challenged us for not providing an effective cost-benefit analysis of our standards. This is a very difficult issue to resolve. What is the benefit? Do you save one life? Do you save ten lives? Do you save a hundred? Currently we accept 60,000 deaths on our highways every year. Is this acceptable? I don't think so. But we do not impose other constraints on our means of transportation on motor vehicles. We arrive at some kind of cost-benefit tradeoff. It is the same thing in health and safety.

I am the first one to say that I would not like to see any employee injured or die with a tragic loss to his family, to the community, etc. But there is a practicality involved here. By allowing the states to develop their own standards, they can take into consideration what is the most effective and maximize the cost-benefit ratio to their local community.

The other emotional issue which has been raised in several other states - I have not heard it raised in New Jersey and I am happy about it, but it is an underlying issue and I think it should be brought to light - is that occasionally you will hear that state inspectors are on the take. As I say, I have not heard it in New Jersey. I challenge anybody to come up to me or Mr. Hoffman or any member of his staff and say, "I know for a fact that a state inspector or an OSHA inspector is on the take." I don't believe it. Both organizations have dedicated people.

They have devoted their lives to health and safety. If anybody has information either in the Federal program or the State program, bring it to our attention. I think one of the reasons why it hasn't been brought to our attention is that it does not exist.

Let me touch a little bit on monitoring. State programs require an effective and intensive monitoring program to insure that the states, including New Jersey, are performing an "as effective as" program. The program is quite complex, but basically it breaks down to three major areas, and one is enforcement. We monitor your ongoing enforcement program at the work site and through case-file reviews and other methodologies. Our standards are reviewed by the experts in OSHA to determine that the standards that are not identical to OSHA are "as effective as" even though written differently.

Lastly, we have a program called CASPA, Complaints about State Program Administration. This permits any employee, any employer or any member of the general public to bring to OSHA's attention a defect or an alleged defect in the state program administration, which we will investigate.

Commissioner Hoffman brought up two or three points to which I would like to respond. I think one of the questions that he answered was: What about multi-state operations - multi-state plants? Isn't it a problem having 27 different state plans or even the possibility of having 50 different state plans? I think multi-state operations or multi-state businesses have been faced with this problem for many, many years in many different areas. Take your local building codes. If they want to put up a building, say, a corporate headquarters or an industrial plant, they are faced with local building codes, then a national code. Workmen's compensation varies from state to state. I can go on and on; there are many examples.

They have lived with this problem for many years and they can live with the problem in the future.

Regarding the oversight hearings that were referred to, where Senator Williams and the GAO audit indicated that there may be some problems in administration of OSHA, we accept such criticism. We think it is healthy; we think it is good. I mentioned briefly that we do have problems and only when we know we have problems can we correct the problems. We have a program only a little over three years old. We staffed it with over 700 field people. We have a total organization of 1500 people. We had to promulgate standards, administrative procedures, regulations, a compliance manual. I think the administrators of OSHA in Washington and in the regions did a tremendous job in gearing up a highly-technical program in such a short period of time. And you are bound to have problems. We know we have problems and we will work them out.

First-instance sanctions were mentioned. We feel that the utilization of first-instance sanctions is a motivator so that an employer does not sit back and wait for an inspection. If he is not faced with first-instance sanctions, he may sit back and wait until he is inspected and then told to correct the condition. There is no motivation for that employer to comply before the inspection. The only way you can get voluntary compliance, we feel, is through the utilization of first-instance sanctions. However, this does not mean that all employers are fined on the first inspection. It is only in the case of certain violations, depending upon the gravity of the violation, his attitude toward the inspection, his good faith in correcting the condition, and past history. So it is not a blanket first-instance sanction. It is utilized where we think it should be utilized.

I thank the Committee for this opportunity to speak in behalf of this important program for the State of New

Jersey.

ASSEMBLYMAN JACKMAN: Thank you very much, Mr. Andree. Are there any questions?

ASSEMBLYMAN LITTELL: Mr. Andree, as I understand it, you are the Federal Regional Associate Assistant Director. Is that correct?

MR. ANDREE: Associate Assistant Regional Director for Federal and State Operations, yes, sir.

ASSEMBLYMAN LITTELL: So you work for the Federal government.

MR. ANDREE: I work for the Federal government, for OSHA.

ASSEMBLYMAN LITTELL: You are advocating that we adopt the State plan in the State of New Jersey?

MR. ANDREE: I am not advocating either way. All I am doing is pointing out that you have submitted a State plan which was approved by the Federal government. Part of that commitment was to enact enabling legislation to carry out the provisions of that State plan. The decision is up to you.

ASSEMBLYMAN LITTELL: What is our time limit for that program?

MR. ANDREE: Pretty short, unfortunately. The plan was approved in January of 1973. The section that you are operating under the OSHA Act, Section 18, provides for a three-year developmental period. At the end of the third year, which is January of 1976, your program must be completely "as effective as." One of the most important things is to have legislation. I can't predict the position Mr. Stender, the Assistant Secretary of Labor, will take on the lack of enabling legislation in the very near future. But we would probably feel if you don't get it very soon, you will not have sufficient time to mount an "as effective as" program if it does require promulgation of standards, promulgation of administrative regulations, training of the

compliance staff in the new procedures. Commissioner Hoffman mentioned that his people are currently trained, and they are. We have been monitoring the training programs. We find that the training that is being given by the State of New Jersey is excellent; that is, technical training. Unfortunately they cannot give administrative training until the bill is passed. They do not know what the bill is going to look like.

ASSEMBLYMAN LITTELL: Sir, if the employees here are being trained properly, and to your satisfaction, and the State did not adopt a State program and the Federal government did preempt our rights in this area, why would they not take over employment of people that are already trained and employed in that field?

MR. ANDREE: That is a possibility under Section 7 (c) 1 of the Act where we can employ state personnel and incorporate them into the Federal program. However, we would not incorporate the entire enforcement staff; it would be a much smaller percentage of people we would pick up, again because of available funding.

ASSEMBLYMAN LITTELL: Because of funding?

MR. ANDREE: Because of funding. Also it is a disadvantage, a disincentive - it's counterproductive to the utilization of Section 18 of the Act. The state program is a presidential and secretarial objective. The President, the Secretary of Labor and the Assistant Secretary for Occupational Safety and Health have supported state programs. Obviously they are not going to do something that may be counterproductive to carrying out this national objective.

ASSEMBLYMAN JACKMAN: Could you tell us to what extent your administration has done monitoring or evaluation in other states that have enacted state legislation?

MR. ANDREE: I can give you only first-hand information on New York, New Jersey and the Virgin Islands, which are under Region II. We have a slightly different program

in the Virgin Islands since they do have what we call an operational state plan. They have enabling legislation in place, which is almost a mere image of OSHA. So our monitoring program is a little different down there than it would be up in New York and New Jersey. Obviously, you do not have first-instance sanctions here. You do not have the walk-around provision for an employee to walk around with a state inspector. There are many other differences that you do not have currently now. What we are monitoring is the ability of state inspectors to identify hazards at the work site. This is what our current monitoring program consists of in New York and New Jersey. Although we are in the midst of writing right now the six-month report on the State of New Jersey plan, which includes monitoring, I can say that we have found the state inspectors are well qualified and we find no problems.

ASSEMBLYMAN JACKMAN: Assemblywoman Totaro.

ASSEMBLYWOMAN TOTARO: There was one thing I wanted to question. You said there would be a different number of people involved in the Federal program versus the State program. Is there an estimated budget that the Federal government has anticipated to operate New Jersey's OSHA program?

MR. ANDREE: We have provided in our budget the current funding at the 50 percent level to carry out the budget you submitted to us in your State plan. If for some strange reason the State decided to drop the plan, did not have enabling legislation, and the Secretary was forced under Part 1902 to instigate withdrawal proceedings, there would be a line item change in our budget and I don't know how much would be changed over in this 7 (c) 1 concept, if any at all. It is counterproductive to motivate a state into a state program. We would rather see a state in a state program. It does maximize our resources. We could take most of our people out of the State of New Jersey after the three-

or four-year period and put them into another state. Whereas if we had a complete Federal enforcement in New Jersey, not only would we keep our people here, but probably add to our staff.

ASSEMBLYWOMAN TOTARO: It just strikes me as being incongruent. I understood you approved our state program and more or less anticipate that this is what New Jersey needs. Or did you make recommendations that our program was too extensive? Are you saying the Federal government, if they took it over, would not have it as extensive as the one we are proposing?

MR. ANDREE: That is a complex question. I am not even sure I am going to have a complete answer for you, to be perfectly frank. Let me try to answer it this way. When we helped the State prepare the state plan, the 18 (b) developmental plan, it was a negotiable item. We sat down at the table and we said, "These are the ground rules. This is our interpretation, etc." I think what was cranked out by the State people was an excellent state program. In fact, in some respects, it is more effective than the OSHA program. For instance, under your section that deals with coverage, you may find an owner, agent, lessee or manager in violation of state safety and health standards and cite him. We may not. We can only cite employers. This makes it a little more effective. It also gives the employers a little relief in cases where there is a condition they cannot correct because they are tenants in buildings. This device provides a little pressure on the owner to make the necessary corrections.

We have purposely not fully staffed -- When I say "fully staffed," I can't give you a number. I really don't have one. I can only give you a concept. We have not fully staffed New York or New Jersey in anticipation of having ongoing state programs. I think if you look at other states that do not have state programs - Pennsylvania

is one - you will see that our field forces are increasing very slowly.

ASSEMBLYMAN JACKMAN: How many presently are in Pennsylvania in the Federal program?

MR. ANDREE: I do not know about Pennsylvania. We have 19 currently in New Jersey - 19 field enforcement people - and approximately 55 in New York.

ASSEMBLYMAN JACKMAN: I wanted to ask you one other question. In the Federal monitoring of other state plans, has this resulted in any preemption by the Federal government or actual disqualification of the state plans?

MR. ANDREE: I always get this confused. Iowa or Idaho - and I apologize to the state where I am incorrect - through our monitoring effort we found was not adequately carrying out the necessary developmental steps and we put some of our people back into that state. We increased our state enforcement. Arizona - I think there is going to be a hearing on disapproval of the plan, not withdrawal.

ASSEMBLYMAN JACKMAN: Of their present plan?

MR. ANDREE: Of their present plan. There will be a hearing on the Virginia plan because we find that the plan as submitted to us is not "as effective as."

I think in the monitoring situation we only have a few months to maybe a year under our belt. I think it is a little premature to really answer that question accurately. I think we need a little more time. But if we apply - and I think there is no reason why we would not - the standards that we have written for ourselves for monitoring and if a state did not meet the "as effective as" criteria in any of the indices, then this recommendation would be made to the Assistant Secretary. The state would have an opportunity to correct its defects and, if the defects were not corrected, then I do think there would be withdrawal proceedings instituted.

ASSEMBLYMAN JACKMAN: Thank you very much for your testimony.

Our next witness will be Charles Marciante, President, New Jersey State AFL-CIO.

I would like to announce the presence of Assemblyman Sinsimer, who is sitting to my right. He has come in since I introduced the other members of the Committee.

C H A R L E S M A R C I A N T E: Mr. Chairman, the New Jersey State AFL-CIO opposes A-833 and S-716, providing for the State takeover of OSHA.

The National AFL-CIO has taken that same position. I think it is rather obvious that we do so. We feel it is in the best interest of the workers of this nation. At the present time, the National AFL-CIO has taken the U. S. Department of Labor to court and has instituted a suit to restrain the implementation of state preemption.

We feel that the carnage to workers in this nation in their work places has gone far enough. We participated in the hearings of 1968, 1969 and 1970 prior to the adoption of the Williams-Steiger Bill. We feel the only effective way to control the safety in work places is through a Federal system. I listened to the testimony of our Commissioner of Labor and Industry, Joseph Hoffman. And I must say in all honesty that if Joe Hoffman were to be the Labor Commissioner in the State of New Jersey forever, we would have no qualms as to the enforcement and the strict regulation of OSHA. However, he is an appointee of the Governor and the Governor can serve but four years, and, if fortunate, another four. Then we would no longer have a Commissioner of Labor by the name of Joe Hoffman. Since we do not have that kind of luck and we do not know what the future holds as to who the new Governor would be or who the new Commissioner of Labor would be, we are compelled to support the national position, in that the Federal OSHA Act guarantees protection to workers nationwide and in the State of New Jersey and is a law that will be enforced .

Politics will not enter into the enforcement of this act. Certainly under the Federal regulation it has not.

The most important thing in our opinion is that workers are adequately protected. We know for a fact that the Federal government does not have the number of inspectors that we have here in the State of New Jersey. There is a provision - and it was mentioned by the previous speaker from the U. S. Department of Labor - in a section known as 7 (c) 1 which permits the states to have the state inspectors become federalized, the cost being borne 50-50 by both the State and Federal government for the training of these people. Since they have already qualified as state inspectors, that training period will be minimal and the cost to the State of New Jersey to have these people federalized really won't amount to an awful lot of money. But it will permit strict Federal enforcement of work-place safety standards and that is the most important and overriding issue before us here today.

I notice there are a number of speakers in the audience and their positions will be either in support or in opposition to the State preemption. I ask that you look at their backgrounds and their interests. If they coincide with the interests and safety of the workers in the State, then, of course, I can only go along. But the important thing here is that the people that are already State inspectors will have the protection under 7 (c) 1 of becoming federalized, with a minimal cost to the State. Then, of course, the entire cost will be borne by the Federal government.

With me today and right behind me is Joseph Yaeger, who is representing the National AFL-CIO Industrial Union Department. The position of the National Industrial Union Department of the AFL-CIO, of course, is in very strong support of the AFL-CIO position.

We ask that you not consider these two bills, A-833 and S-716, since they are not in the best interest of the

workers of New Jersey. Thank you.

ASSEMBLYMAN JACKMAN: Mr. Marciante, do you believe the Federal government is doing the job within the State of New Jersey that it should be doing --

MR. MARCIANTE: Yes, sir.

ASSEMBLYMAN JACKMAN: -- with the present allotment of inspectors?

MR. MARCIANTE: While they may have some 17 or 18 inspectors, I feel very comfortable in the fact that when these people go into a work place and they conduct an inspection, it is superior to that being done, in many instances, by State inspectors.

ASSEMBLYMAN JACKMAN: Any questions by members of the Committee?

ASSEMBLYMAN LITTELL: Mr. Marciante, you said that politics has not affected the Federal program. Do you feel it has affected the State program?

MR. MARCIANTE: At the present time, not really.

ASSEMBLYMAN LITTELL: What is your opinion of our State program? You just mentioned that you think the Federal employees in some cases do a better job on inspections. What do you base that on?

MR. MARCIANTE: When a Federal inspector goes on to a job, it has been reported to me by a number of union representatives, the first thing the Federal inspector does is to meet with the employer and request the accompaniment of a union representative. If an unsafe condition is present - and in most instances the reason for an inspector going on to a job is that there has been a reported unsafe condition - the union representative is then able to point out to the Federal inspector where the problem lies and the Federal inspector asks for compliance in having that unsafe condition adjusted.

ASSEMBLYMAN LITTELL: How does that differ from our State inspectors?

MR. MARCIANTE: In too many instances, State inspectors come onto a job and there is no request for a union representative to be in attendance.

ASSEMBLYMAN LITTELL: No one from the employee side of the picture?

MR. MARCIANTE: That's correct, Assemblyman.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Marciante.

MR. MARCIANTE: Thank you, Mr. Chairman and Committee members.

ASSEMBLYMAN LITTELL: The next witness will be Mr. Kenneth Keller, New Jersey LP-Gas Association.

K E N N E T H V. K E L L E R: Mr. Chairman, I am Kenneth V. Keller, representing the New Jersey Liquefied Petroleum Gas Association.

I respectfully bring to the attention of the Committee a correction that should be made in Section 34 of Senate Bill No. 716 and Assembly Bill No. 833.

Section 34 sets forth certain Acts to be repealed. Included is P.L. 1950, C. 139, Sections 21:1B-1 through 21:1B-8, which is the New Jersey Liquefied Petroleum Gas Act.

This Act as amended in 1958, vested in the Superintendent of State Police the authority to make, promulgate and enforce regulations setting forth minimum standards covering the design, construction, location, installation and operation of equipment for storing, handling, transporting by motor vehicle, tank truck and tank trailer, and utilizing liquefied petroleum gases and specifying the odorization of said gases and the degree thereof.

Exceptions to the aforementioned are covered by Revised Statutes 21:1B-2 (b), which placed public utility establishments, marine terminals, pipeline terminals, refineries and manufacturing establishments under the jurisdiction of the Commissioner of Labor and Industry.

In anticipation of the enforcement of OSHA Standards in the State of New Jersey by the Department of Labor and Industry, the LP-Gas Law was amended by Chapter 107 of the Laws of 1972. This amendment transferred all powers, functions and duties formerly exercised by the Superintendent of State Police over LP-Gases in places of employment to the Commissioner of Labor and Industry.

The Commissioner of Labor and Industry, therefore, presently has the powers necessary to administer the Occupational Safety and Health Act for the protection of employees as it pertains to LP-Gas.

If the New Jersey LP-Gas Law is repealed by the passage of Senate Bill No. 716 or Assembly Bill No. 833, without the repeal of the LP-Gas Law being deleted from these bills, there will be no State control over LP-Gas in those areas presently under the control of the Superintendent of State Police, primarily domestic locations, which presently number in excess of 100,000, over the transportation of LP-Gas, nor over acts involving LP-Gas that would affect the safety of the public.

I would suggest that the repeal of the LP-Gas Law could have serious consequences and, therefore, ask your consideration of the deletion of P.L. 1950, C. 139 (21:1B-1 through 21:1B-8) from the Acts to be repealed. Thank you.

ASSEMBLYMAN JACKMAN: Are there any questions?
(No response.) Thank you for your testimony.

The next witness will be Senator Merlino, the sponsor of Senate Bill 716.

S E N A T O R J O S E P H P . M E R L I N O: Thank you, Mr. Chairman and members of the Committee.

I am the sponsor of S-716 and, hopefully, in sponsoring S-716, I represented then and am representing here this morning the people of the State of New Jersey, particularly the working people of the State of New Jersey, to which

this bill is directed.

First I would like to say that this bill, if enacted, does not irrevocably lock the State in with the inspections. This, of course, is always subject to review. If and when the Federal inspection system gets to the point where we think it is good enough for New Jersey, we can certainly amend or modify our particular law should the occasion arise.

Speaking of politics - Mr. Marciante said they want to keep politics out of inspections - one of the major and main reasons for my introducing and pushing for State regulation was that very thing. I think we are all aware of the fact that the present administration - and I use that over the four-year term, not the immediate occupant of the White House - has been as begrudging as possible toward the public regulation of occupational safety and health. Whether it was just political talk or partisan rhetoric, there were also reports that the administration was lax and was trading this lax Federal supervision for business campaign contributions. And if that isn't politics, I don't know what is.

I outlined briefly in a letter to you, Assemblyman Jackman, what this bill would do and asked for favorable consideration. This, in effect, is what my testimony is here today. I also outlined several recommendations by way of amendments which I think were some of the areas that Mr. Marciante addressed himself to.

This bill would provide for continued State jurisdiction over health and safety in our workplaces. Without its passage, the State would cede jurisdiction to the Federal administration. Federal preemption does not look like a happy prospect for our workers.

Further, the Federal government would be able to supply far fewer inspectors to the State of New Jersey than the State now has. I think the Federal regulations would

supply something like twenty to the State and I think now we have a force of several hundred. We, therefore, risk a real loss in protection rather than a gain if we permit Federal take-over. That is why I feel that Bill S-716, in some form, deserves passage. I am not here to tell you that this is the most perfect bill because I am also as sponsor recommending amendments. I think this bill with the suggested amendments that I am going to make - and perhaps there will be some others - is deserving of passage.

I am concerned that the State inspection system be even more pro-worker than the Federal system could be. It disturbs me to think that an inspection bureaucracy might become a little too "understanding" of the "problems" of the industries it is supposed to regulate, and perhaps lose some of the zeal it should have in defending workers' interests above all else. It is workers' interests, after all, that they're hired to safeguard.

I could understand Mr. Marciante's statement here today that under Federal regulations it is required that the inspector going into inspect any area would have to not only have a member of the management team with him, but also a union representative.

I, therefore, would like to request the amendments to read as follows. It was rather, not necessarily amusing, but surprising to me that some of the letters that I received from people who are interested in the State inspection system as it is -- and, as I understand, by regulation, some of the things which I am now proposing to incorporate by amendment to this bill have already been put into effect. So perhaps they also see the handwriting on the wall. We will all admit that perhaps the present State system may not be all that it is supposed to be. But I think we can through proper legislation put it in its proper perspective.

The recommendations for amendment are:

(1) An inspector making an inspection at a workplace or work site must consult in private with representatives of any employee union, not necessarily, as Mr. Marciante suggested, in conjunction with. Any worker complaints about alleged hazards to safety or health for which the inspector does not write an order (i.e., which he does not cite as a violation) must be reported to the Division, along with an explanation why an order was not written. The report must be signed at the site by the union representative, and copies be provided to the union representative and to the employer. I think this will remove any thought that there might be a little too much camaraderie between the inspector and the employer.

(2) In all workplaces a sign be prominently posted (as we require minimum-wage requirements to be posted now) which lists all health and safety requirements relevant to that workplace. Any employee assigned to work where such a safety requirement is being violated shall have the right to refuse to work without loss of pay or job until the violation is corrected.

You see, members of the Committee, the amendments are directed to the benefit and for the benefit of the worker.

(3) The inspector may at no time, in determining whether a given condition violates safety or health standards, consider what he evaluates to be the financial ability of the employer to correct the alleged deficiency. This is not the inspector's job; he is merely there to inspect and provide for the safety, not necessarily the cost to the employer to correct any safety hazard that might exist.

(4) No inspector may accept any gratuity of any kind, whether it be lunch in the plant cafeteria or lunch at the country club or wherever it might be, from any employer of a workplace that he inspects or that is to be inspected or that has been inspected. In fact, I think that should be changed to provide that he can accept no gratuity of any

kind from any employer, whether that particular inspector is inspecting those premises or not. By the way, this has already been made one of the regulations of our own State Department of Labor and Industry. It was too easy to go to the country club for a two-hour lunch and a couple of martinis, and that would be the inspection that was made.

These added provisions would make safety as much a labor right as any other work or contract provision. This ought to guarantee first-rate protection for our workers - better protection from profit-seeking employers who cut costs at the expense of their employees' safety than they could get from Washington. I don't believe there has been any real reason demonstrated as to why we should give up to Washington the safety of our workers.

I have heard some of the reasons submitted, such as the permanency of Federal legislation. That was one reason put forth. I can't subscribe to that. It hasn't been demonstrated to me that we would get a better deal and one which would be beyond politics if it came from Washington and not from within our own State. I have seen nothing to convince me that that would be so. Thank you.

Incidentally, you have the recommended amendments, Assemblyman Jackman, in my letter to you, copies of which were sent to members of the Committee and to your staff assistant. They are the ones I read off today.

ASSEMBLYMAN JACKMAN: Senator, do you recommend these be committee amendments?

SENATOR MERLINO: However you want to put them. Pride of authorship is fine, but my interest is seeing that we get an OSHA bill in New Jersey.

ASSEMBLYMAN JACKMAN: The only reason I asked that is, if it goes back to you, it would have to go back into the Senate and then back over to us. If you wanted the

recommended amendments to come from this Committee ---

SENATOR MERLINO: However we can expedite this and get the best legislation is acceptable to me.

ASSEMBLYMAN JACKMAN: I would like to ask you just one or two more questions, Senator. What do you think might have accounted for the substantial falloff - I think it was approximately 69 in the work-related fatalities - in Pennsylvania in the year following the Federal takeover of the OSHA program?

SENATOR MERLINO: Very simply, Mr. Jackman, they didn't have any inspection to begin with in Pennsylvania, as I understand it. Even the Federal inspection was an improvement for them. But we have a valid and good inspection system here in New Jersey, which is better than that which is proposed by the Federal Act. To improve on Pennsylvania's experience was a very simple thing with the enactment of Federal legislation. They had nothing to begin with.

ASSEMBLYMAN JACKMAN: One other question. You can see I tried to do a little bit of homework.

SENATOR MERLINO: I presume that you do a lot of homework, Assemblyman.

ASSEMBLYMAN JACKMAN: Thank you. If, as you suggest, the State can enforce the OSHA program, as well as or more effectively than the Federal government, can you explain how it is between July, 1973, and March of 1974, the State assessed employers only about 58 percent of the amount for the violations assessed by the Federal OSHA program, even through there are more than four times as many State inspectors as there are Federal?

SENATOR MERLINO: You did your homework in a detail which I had really not gotten into. But to answer your question, I think this would again bolster the fact that we do have a good inspection system. Merely by citing numbers of complaints doesn't necessarily mean that they are not doing a good job or that they couldn't do a better job. For example, you know the best policeman isn't the

one that issues the most traffic tickets. I don't know what the purpose of your question was, but that is the answer that I can give you, that merely citing violations doesn't necessarily mean that they are doing a better job. Maybe the fact they have been here and been doing such a good job means there are less violations to cite.

ASSEMBLYMAN LITTELL: Senator Merlino, as Chairman of the Senate Finance Committee, what is your position as to the comments made by Commissioner Hoffman as to the State's cost and share. His statement was that the total cost for a State OSHA program would be about three million dollars a year, half of which would have to be State funds, and in his statement he estimated that the one and a half million dollars could be raised from fines and permit fees under the program. Do you subscribe to that or do you disagree with that?

SENATOR MERLINO: I didn't hear the Commissioner's statement, but I have never placed the value of the safety of workers in dollars and cents. If it costs us money to protect our workers, I can't think of a better way to spend our money.

ASSEMBLYMAN LITTELL: Thank you.

ASSEMBLYMAN SINSIMER: Senator, in your suggested amendment where you recommend that the inspector consult with a representative of an employee union when he makes his inspection, does it contain any qualifications for the representative of the employee union or stipulate how he is to be chosen?

SENATOR MERLINO: I think that would be a matter of regulation. If we put in the amendment that he must consult in private with a representative of any employee union, I think beyond that it would be subject to regulation rather than part of the statute. I don't think we should legislate each and every minute detail as to who that would be;

I believe that would be something that would be done by regulation as to which union representative. Perhaps the union would be the one to set that up in their own regulations as part of their contract as to which union representative would be the one who would consult with the inspection team. Is that your question?

ASSEMBLYMAN SINSIMER: I just want to find out who would make that choice. The choice then would be made by the union.

SENATOR MERLINO: I would think so. Since it is going to be a union representative, it would have to be the union's choice, not management's choice.

ASSEMBLYMAN LITTELL: What about plants and factories that are not union. We are going to protect those people too. How would you select an employee from that type of a factory?

SENATOR MERLINO: I think again where they are non-union that would be covered by the regulations or this would be another place for a committee amendment, Mr. Chairman, to cover those non-union establishments.

ASSEMBLYMAN JACKMAN: I think it could be an employee-designated representative.

ASSEMBLYMAN GALLO: By a majority of the people.

ASSEMBLYMAN JACKMAN: Senator, thank you very much for your testimony.

SENATOR MERLINO: Thank you.

ASSEMBLYMAN JACKMAN: Next will be the representative of the New Jersey Manufacturers Association. Who is representing that Association? Will you kindly state your name for the record.

LESTER KURTZ: My name is Lester Kurtz and I am Secretary of the Industrial Relations Committee of the New Jersey Manufacturers Association. I appear today to present for your consideration the position of our

Association with regards to the enactment of enabling legislation as the first step towards implementation of a three-year program for State administration over occupational safety and health.

Our Association strongly supports Assembly Bill 833 and Senate Bill 716. The passage of either of these bills is considered a desirable objective. There are several procedural objections to the present form of the proposed law which I will get to in a few moments. Initially, I would like to provide some background on what either of these bills will accomplish.

The Federal Occupational Safety and Health Act was signed into law in May, 1971, and precluded New Jersey and other states from enforcing existing state laws pertaining to Occupational Safety and Health - such laws were the New Jersey Worker Health and Safety Act, Construction Safety Act, and the Mine Safety Act - unless specifically authorized by the Federal Government. When the State of New Jersey had a developmental plan approved by the government, we were permitted to continue for a limited time to enforce our State laws. The Federal law contained a provision encouraging states to develop a State OSHA plan so that they may assume responsibility for the administration and enforcement of Occupational Safety and Health standards. The Federal law specifically requires that in order for a state plan to be approved it must produce standards which will be at least as effective in protecting the safety and health of employees as existing federal standards.

New Jersey has, for many years, been a leader in the development of occupational safety and health standards. In fact, both labor and management have consistently supported strong and effective safety laws for the protection of New Jersey workers, as evidenced by the Liquefied Petroleum Gases Act, Fireworks Regulations Act, Railroad

and Airline Sanitation Act, High Voltage Proximity Act, and the Mercantile Establishment Safety act. These and the other laws that I have previously mentioned are all for the protection of New Jersey workers. It is also worth mentioning that the Federal Safety Law was modeled in part from the existing New Jersey law.

With encouragement from the federal government, the former administration developed a comprehensive occupational safety and health plan to conform to federal requirements. I might point out that the plan is roughly three inches thick. The federal government approved a State OSHA Plan for New Jersey and enabling legislation is the next step. The attached Appendix I is a summary of what the proposed law will accomplish. Rather than go into detail, I will just submit it for the record. Assembly Bill 833 and S 716 propose to implement the intent of the State to reassume the enforcement of safety and health standards, which responsibility had been preempted by the Federal Occupational Safety and Health Act of 1970. In addition, this proposed law will phase in State jurisdiction over safety and health for public facilities as well as research and development facilities, which we presently do not cover and which will be covered in the proposed State law. The law will also provide for consultative inspections and a program of employer penalties for violations of the law.

While our Association views State administration of Safety and Health as a desirable objective and is favorably disposed to this concept, there are a few reservations which I would like to bring to your attention.

In the proposed law under the question of judicial review, the most important reservation is that which deals with the procedure for enforcement, judicial review and hearings, contained in Sections 19, 20 and 21 of the proposed State OSHA plan. Under these sections, you will find that

the Commissioner of Labor and Industry is in complete charge of the inspection or investigation process, the determination of the citation (penalty) or preparation of an abatement schedule, the appointment of hearing examiners, and the authority to make the final decision. All these powers are vested in the Commissioner of Labor and Industry. In addition, the judicial review section provides that the Commissioner's findings are conclusive and no objection not urged before a hearing shall be considered by the Court unless excused because of extraordinary circumstances.

In our view, the Commissioner would be not only the investigator and the prosecutor, but also the judge and jury, with respect to violations. Under such circumstances, unless a new trial could be had before an independent body, there would be little alternative but to affirm the Commissioner's decision. Should an appointive cabinet member have this much authority? Our Association questions this. We strongly urge that there be a provision for an independent review commission which is in keeping with the Federal law. The Federal law does provide for an independent review commission.

It should be noted that under Section 22a, the hearing examiners shall be appointed by the Commissioner. This indicates an intent to place the hearing examiners in the unclassified service. In addition, under Section 22b, the Commissioner has the authority to issue orders modifying the hearing examiner's report. With all due respect for the authority that an administrative officer may need to properly perform the duties of his office, it does appear that Section 22 of the proposed bill is suspect of political considerations as well as potential pressure, leaving somewhat in doubt the impartial, independent review of the hearing examiner.

Another objection we have is with regard to administrative authority. We are concerned with the provisions of Section 15 for the establishment of the administration and enforcement of the Act by the Division of Workplace Standards. Under the Federal regulations concerning the criteria for approval of State plans, contained in Section 1902.3 of the Federal law, it is provided that "The plan shall contain assurances that any other responsibilities of the designated agency shall not detract significantly from the resources and priorities assigned to the administration of the plan." The Division of Workplace Standards has multiple functions and raises a question of whether the administration of the State Occupational Safety and Health Act is properly placed within that Division.

We urge that in accordance with the Guidelines provided in the Federal OSHA Plan the proposed New Jersey Occupational Safety and Health Act be amended to provide for the establishment of a Division of Occupational Safety and Health within the Department of Labor and Industry. This division should be completely apart from the Division of Workplace Standards and should be administered by a licensed professional engineer with a minimum of 10 years' safety experience. It would indeed be unfortunate if the State did not take advantage of its present safety capability and efficient operation under a qualified technician. Our present safety statute requires that the Administration of the Bureau of Engineering and Safety shall be in the hands of a qualified professional engineer, while the proposed act deletes this requirement. It should be noted that the State of New York has recently created a new Division to administer their State OSHA plan.

The members of the New Jersey Manufacturers Association are interested in obtaining the best possible State law and its administration by competent and knowledgeable

individuals. The adoption of the above suggestions are consistent with the policies already approved by the U. S. Department of Labor. Suggested language for the above proposed amendments is contained in Appendix II.

It is significant to note that a recent Federal evaluation report covering state operations indicated that New Jersey's failure to enact enabling legislation was a significant problem. The failure of action on the bill has postponed significant developmental steps under the State timetable, which includes the adoption of Federal standards, development of a public-employee program and employer penalties for violations in line with the Federal program. Because of the delay in the enactment of the enabling legislation, I believe that a revised timetable has been requested by the Federal government.

Accordingly, the New Jersey Manufacturers Association respectfully requests your favorable consideration of either A 833 or S 716 and urges your support for the release of a bill from Committee with the suggested amendments. We also urge your support for its passage.

(The attachments to Mr. Kurtz's statement can be found beginning on page 3 X.)

ASSEMBLYMAN JACKMAN: Mr. Kurtz, I notice you have recommended a tremendous amount of amendments in the appendix to your statement. I would like to make a recommendation to you. Hopefully, after this hearing, our Committee is going to meet again today to go over other legislation. I am going to suggest that you appear at that meeting. I don't know at what time it will be because it is based on the schedule over in the Assembly. Our legislative aide, Mr. Ben-Asher, will talk to you about it. I think it will take up too much time to discuss all the amendments you are suggesting in behalf of your Association.

Does any member of the Committee wish to ask any questions?

I think because of the nature of the suggested amendments that you submitted, Mr. Kurtz, it would take about two hours of our time here. I want to try and expedite this hearing and yet give everybody an opportunity to be heard.

We will discuss this further in our Committee meetings and I suggest you be present.

MR. KURTZ: Very good.

ASSEMBLYMAN JACKMAN: Our next witness will be Donald Philippi, International Federation of Professional and Technical Engineers, Local 195.

Mr. Philippi, do you have a prepared statement?

MR. PHILIPPI: No, I don't, Mr. Chairman. I do have some informational sheets which I would like to pass to the Committee.

ASSEMBLYMAN JACKMAN: All right. You may proceed.

D O N A L D P H I L I P P I: Chairman Jackman and members of the Committee, my name is Donald Philippi, Business Manager of Local 195, International Federation of Professional and Technical Engineers, AFL-CIO.

I would like to take this opportunity to thank the Committee for the privilege of testifying at this time on this very important pending legislation, Assembly Bill 833 and Senate Bill 716. We support these bills fully.

I testify today for two reasons, one being to assure you, the Committee, and everyone here today, that this State has the expertise and capabilities to implement and enforce any Safety Legislation delegated to the Division of Work Standards. Over one thousand years of safety experience already available in our State Safety Inspection Section, and currently utilized, have resulted

in being ranked in the "Top 10" nationally in the safety field.

The second reason is a justified selfish one, that public employees must be protected by safety inspection. I am sure I share the same feelings as the other inspectors within the Department of Labor and Industry, which number some 140 people.

Approximately 89 years ago, the governing fathers of this great state realized the need for legislation and established mandatory safety regulations for workplaces.

Some 85 years later when New Jersey was well on its way as one of the leaders of safety in this country, our Federal government finally realized the importance of attempting to make sure that the breadwinner returns home after work, free of injuries.

New Jersey is proud that our leaders had the foresight of promulgating legislation for safe workplaces at the time that they did.

It is not my intent to reiterate all the statistics already presented in the past and also presented to this Committee in other meetings. It is, however, worthwhile to scratch the surface of those statistics that will best illustrate and exemplify what the State is doing and has done as compared with the Federal program.

During the fiscal year from July 1, 1973 to June 30, 1974, the following was accomplished by the State of New Jersey and also OSHA.

1. New Jersey inspectors performed 48,651 inspections. OSHA inspectors throughout the 50 states and our territories made only 78,082 inspections. In percent evaluation, 93 New Jersey inspectors accomplished in New Jersey approximately 62 percent of that which was accomplished by the OSHA total staff nationally.

This superiority by the State is no reflection on our Federal Government. It must be realized that it takes

many, many years to properly create a sufficient safety force and the pool to choose from is limited because of its complexity. Fortunately, the State of New Jersey has had the force for nearly a century.

2. Follow-up inspections, that is, visits made after a citation has been issued during the general inspection are checked for compliance. OSHA presently follows up approximately 20 percent of citations issued.

This function is extremely important since to cite and trust that the citation will be complied with is not a sufficient means of enforcement.

3. All places of employment under jurisdiction of our current State legislation are inspected regardless of the amount of employees.

Obviously, because of manpower, the Federal Agency adopted a policy to inspect only those places in which 25 or more are employed unless a fatality occurs. During the fiscal year 1973-1974, the average visited by OSHA had an employment population of 110 per inspection.

Unfortunately workers get injured equally, if not at a higher rate, at lower-populated work places. This is substantiated by the fact that larger industries normally have more financial assistance enabling them to hire proper personnel and equipment.

4. An outstanding example to reflect accomplishments by our State agencies during 1973-1974 is the coverage of the retail trade, agriculture, mining and explosives:

4,582 retail trade establishments were inspected by State Inspectors, 3,811 were made by OSHA nationally; 8,939 agriculture establishments were inspected by State Inspectors, only 273 were made by OSHA nationally; 441 mining and explosive establishments were made by State Inspectors, only 256 were made by OSHA nationally. Again this comparison clearly indicates that we, in this State, are very well capable in enforcing safety standards.

The four examples just given is a very small illustration indicating the benefits and reasons why the State plan should be implemented.

There are many programs currently enforced by our New Jersey Plan that are not contained in the Federal Program.

Elevators are inspected at all work places. OSHA does not do the same. It must be realized that elevators are not toys and strict regulations must be enforced to prevent injury.

Work in confined spaces is another regulated concern by our State agencies. Very little is regulated under the OSHA plan. We can all appreciate the need of enforcement in dangerous locations as tanks, silos, tunnels, etc. The present confine space regulation, New Jersey Administrative Code 12:170, clearly outlines safe procedures when working under these conditions.

New Jersey presently has an engineering staff of approximately 15 professional Engineers who examine and approve plans for new structures, as well as old, and equipment utilized in the building. It is not difficult to understand the importance of making sure each structure is considered safe to work in.

OSHA does not require any work places to be approved structurally.

A training program for the general public is available by the State agency, in which specialized Senior Safety Inspectors spend full time in lecturing and advising on safety. New Jersey realizes the need to educate and the benefits derived from this service. OSHA does not have this vital service available.

This State, as well as OSHA, investigates every fatality that may occur in the work place. In addition, New Jersey investigates all injuries that occur. OSHA does not.

The importance of investigating injuries is equally as important as fatalities, since an injury may become a fatal one if the condition that caused it is not corrected.

Time does not permit me to discuss many other areas in which the New Jersey Plan would be more acceptable than the takeover by the Federal Government. I am sure during the many hearings previously held, representatives of State Government, industry, business and labor have presented substantial testimony in favor of the State Plan.

In conclusion, I have with me today, Mr. Chairman, some of the inspection force of the Department of Labor and Industry, Mr. Fred Nemeth, Lou Murphy, Joe Smith, and Leon Johnson. They would be happy to answer any particular questions. There has been some indications that the State Inspectors do not contact the union representative. I just presented to you the form that is carried by the State Inspectors. In Section C, you can see there is a special block put on the form that spells out a space for the union representative to contact in the walk-around the plant.

Also regarding the qualifications and the training the men have undergone, it has been testified by both Commissioner Hoffman and other people that our State Inspectors have already undergone extensive OSHA training and are continuing to undergo this training. If you have any particular questions on that, they would be happy to answer them, Mr. Chairman.

ASSEMBLYMAN JACKSON: Mr. Philippi, are you satisfied that the number of inspectors that are operating within the State of New Jersey are doing an effective job or do you feel that additional men or women for that matter are necessary to do a thorough job within our State?

MR. PHILIPPI: We feel, Mr. Chairman, in the area of public employees, that this whole area has to be improved. For example, we have many complaints from the

Central Motor Pool, Department of Transportation, garages where there are certain fumes, etc. In these areas involving public employees, under the State plan they would be inspected; under the Federal plan there would be no inspection. In fact, we have called many times on the Federal people and absolutely got no satisfaction of having them come in in certain places where State workers work. We have to protect the State workers. They are not second-class citizens. The State employees need adequate protection also. Now we call the State Department of Labor and Industry and they come out and do a courtesy inspection in this area. In the over-all plan - and I think we have given you statistics - under the Federal you'd have only 19 inspectors. I think our force here, the facts show, did 62 percent of all inspections as compared to what OSHA did. If we had only 19 people come in, what would happen in plants would be you would have no inspection. And from my experience, when there is a safety problem in the plant and nothing is done, it leads to wild-cat strikes - it leads to uneasiness and unrest with the workers. Sometimes issues are that strong. They are not going to wait; they are going to walk out.

ASSEMBLYMAN JACKMAN: Let me also mention the fact that because of some of the suggested amendments that were made here this morning both by the sponsor of the bill, Senator Merlino, and Assemblyman Gallo, who has a companion bill, and also the New Jersey Manufacturers, it is going to take a lot of hard work and effort upon the part of the Committee to go through these amendments. It is not something that is just going to be done haphazardly. And I am afraid it is going to take some time. My suggestion to you is that you be present at these meetings to give us some input. We'd like some expertise on both sides. I have asked the AFL-CIO to be present at our committee meetings. They are all

open meetings. We would like to come up with a bill that is going to be acceptable to everybody. As you have heard here this morning, Senator Merlino has suggested amendments to his bill, and with the other amendments that have been suggested, it is going to take some time.

Assemblyman Brown, do you want to ask a question?

ASSEMBLYMAN BROWN: Mr. Chairman, through you to Mr. Philippi, you indicated that in some cases when you have State Inspectors, they do not contact the union representatives of that particular plant to go through the plant with them.

MR. PHILIPPI: No. That charge was made earlier in the day and I presented forms that our State Inspectors carry that has a specific section that spells out the union representative to see for the walk around the plant. There is a special section that they have to fill out. So they do contact the union representative if there is one in the plant. There is a special section. They put his name down. It is on the form they carry with them.

ASSEMBLYMAN BROWN: So they do assist the State Inspectors when they inspect the plants in most cases?

MR. PHILIPPI: Right.

ASSEMBLYMAN BROWN: Thank you.

ASSEMBLYMAN JACKMAN: At this time, there will be a ten- to fifteen-minute recess.

(Short Recess)

ASSEMBLYMAN JACKMAN: The next witness is Louis Murphy.

L O U I S M U R P H Y: Mr. name is Louis Murphy. I am employed by the Bureau of Engineering and Safety as a Senior Safety Inspector. I am also the Shop Steward and Vice President of the Safety and Security Chapter of Local 195, IPTFE, AFL-CIO.

There have been several statements that have been

made to which I take a different position. I would just like to clarify the other side of these statements.

Much has been made about the State of Pennsylvania relinquishing the job of safety enforcement to the Federal government and the reduction from 400 state inspectors to 40 inspectors. Perhaps not everyone is aware, but the State of Pennsylvania is not on the merit system; that is, competitive examination and civil service. Jobs are given out on the basis of who is in the State House. Every election year when there is a change in the Governor of the State of Pennsylvania, there is just wholesale moving in and out of employees, according to their party affiliation. This is not the case in New Jersey.

Another point that I would like to clarify is: The forms that were given indicated we are required to contact an employee representative when we walk around and make our inspections. The form says "employee representative." It does not say "union official." We contact shop stewards, chairmen, and what have you, from unions on our inspections, and so note. We also contact people in places where there are no unions. The law states "all employees." We speak to a representative. We have the right, under the amended Worker Health and Safety Act, to speak in private to any employee. This amendment does not give the right for us to take the employee around with us. This is in the proposed State plan which I hope we will be adopting.

If the employee representative feels that there are unsafe or unhealthy conditions present in the plant that we may not be made aware of or pick up during our inspection, we ask him to please point them out to us. If it is a citable violation, we cite them in writing at the time of the inspection. The citation is issued and, hopefully, the condition is cleared up.

Another statement that was made that I take offense

to was the statement made about inspectors going out to the country club for two-hour lunches. Our instructions from our Director have long been that we shall not accept any gratuities or anything that could be construed to influence our jobs in the course of our duties. Our Director, our Commissioner, our Governor, are violently opposed to any inspector or enforcement personnel having lunch or anything else with people in places we inspect. Our Director has stated that people that violate this will be fired.

Another thing that I hear all the time is, "You let management know when you are coming into the plant." No, we don't let management know. We have a directive and it has never been the policy of this Bureau to announce to a company in advance that an inspection is going to be conducted on such and such a date. We go to a plant unannounced. This is the way it is and anyone that violates that loses their job, civil service notwithstanding.

In regard to training, for the past year and a half, the State, upon signing the agreement with the Federal government, has been giving us training in the Federal Register. This is the over-all OSHA law. In addition to that, through the years we have been given specialized training in elevators, machinery, chemicals and everything else prior to the inception of the OSHA Act.

We feel that we have a competent staff and, if we have a competent law, that we can administer it the way it is supposed to be done. We feel that we are administering our job properly now. Thank you.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Murphy.

MR. MURPHY: May I say one more thing?

ASSEMBLYMAN JACKMAN: Surely.

MR. MURPHY: For myself and the other inspectors here, this is our time off. This is vacation days that

we are here on. We are not here on State time. Thank you.

ASSEMBLYMAN JACKMAN: Let me make just one statement. I have great faith in people who work for a living in this State. I have a feeling that you do your job well. I wouldn't want you to take offense to any of the statements made, such as, you go to a country club. You don't look to me as though you could be bribed. So please don't take offense to any of the statements that are made.

MR. MURPHY: Thank you.

ASSEMBLYMAN JACKMAN: Ricki Stochaj will be our next witness. I wanted to break this up and give a young lady an opportunity. It seems the men have monopolized the meeting this morning.

R. R I C K I S T O C H A J: We are used to that.

For purposes of identification, my name is Ricki Stochaj and I am the President of the Consumers League of New Jersey.

An earlier speaker suggested that the audience find out where people come from and what organizations they represent. It may surprise some people that a consumer organization would testify at this hearing. But our organization was founded in 1900 on the idea that consumers must be responsible not only for the safety and quality of the goods that they consume and purchase, but also the conditions under which those goods are produced and the services, and what happens to the producers of goods and services. And I think that explains why we are here and why we have had this long interest.

The Consumers League of New Jersey supports Assembly Bill 833 and Senate Bill 716. They are measures of which their authors, we feel, have good reason to be proud. The stated objective of this legislation to

"assure safe and healthful working conditions for the working men and women of New Jersey", is an ideal toward which earlier New Jersey legislatures have been working for a long time. The good legislation passed in our State in the past has paved the way for the legislation under discussion today.

Ten years ago an earlier League President was here to support a plan to revise some old safety laws that were out of date. The 1965 Legislature did a very skillful job when they replaced those out-of-date laws, saved the good parts and produced one comprehensive statute that the U. S. Bureau of Labor Standards praised at the time, as the best state law for the purpose in the United States. That was a great achievement for that time, but we feel that we can do better now because under the Federal Williams-Steiger Act of 1970, the Federal government now offers help and financial support to states that are willing to improve their laws to conform to Federal standards and to enter into an agreement with the Federal authorities for a partnership in which the State and the Federal government work together in administering this plan.

I am not going to discuss some of the material in my paper because it is a little lengthy. But some of the advantages that we see in passing the State legislation to provide for this Federal-State partnership are the following:

First, New Jersey will be eligible to continue receiving Federal reimbursement for half the cost of administering the plan.

Second, the State and Federal compliance officers will continue to work together as they have been doing for some months to develop the new program.

And, thirdly, if at the end of three years, the Federal administrator determines that the New Jersey plan has become adequate to take over the full administrative responsibility, he may then turn it over to the State

and give up his concurrent power. But he is still required by Federal law, to continue to evaluate the way the State plan is administered and to monitor it. If, after turning over the responsibility to the State, the Federal administrator finds that there is in New Jersey, "a failure to comply substantially", with the requirements of the State plan, he can put an end to that plan at any time by withdrawing approval.

We mention this because there are some allegations that the State will just go on its own and be removed from any kind of Federal regulation.

This combination of provisions in the Federal law plus the monitoring and the concurrent power of the Federal administrator during the three years development period, and his powers to put an end to that plan at any time that he may find it is not being properly administered would, we submit, result in a program that is both stronger and better protected against misuse than it would be if either State or Federal government administered the Federal law alone.

Some people may be interested in a rather recent court decision, the Robinson Pipe Cleaning Company versus the State of New Jersey, that is explained in our paper. I think the point is that the whole idea in Section 18 of the Federal law which provides for a partnership was clarified in Judge Coolahan's decision in that case.

The only alternative to this legislation that we are considering today is to defeat it or to let it die. As we heard earlier, December 31st is the deadline for New Jersey coming up with its own plan. The effect of not coming up and not passing this legislation would be to leave New Jersey without any enforceable work safety law, because under the Federal Act, OSHA must take over the entire responsibility for safety in any state that does not have an approved state plan. In the absence of

such a plan, the OSHA regulations supersede all existing older state laws.

Earlier today, Commissioner Hoffman referred to the problems in Pennsylvania, and we have been very much aware of what has been happening there. In our letter of October 4th to this Assembly Committee, we referred to the deplorable conditions that exist in Pennsylvania. Rather than go into those details again, we enclose for the record a copy of the official Commonwealth of Pennsylvania, Department of Labor, News Release of February 26, 1974, which gives further details and figures.

At least part of the difficulty in Pennsylvania appears to have been lack of staffing. We have heard all these numbers and I think it is important for us in New Jersey to realize that it would appear entirely likely that the workers of New Jersey will pay for a false kind of economy by a similar increase in injured workers in this State if we also reduce the number of inspectors. We regret to report that there seems to be no indication that, in the foreseeable future, OSHA will have anything like the staff needed to protect our labor force any better than they did in Pennsylvania.

Since the October 4th letter that we wrote to this Assembly Committee, further evidence of serious shortcomings in OSHA's administrative program has been received from Senator Harrison A. Williams. The U. S. Senate Labor Subcommittee has been conducting oversight hearings to ascertain the effectiveness of OSHA in protecting the safety and health of American workers. The Labor Subcommittee, last summer, requested assistance from the General Accounting Office in examining the OSHA operations which they felt to be of utmost importance. The Subcommittee staff then developed 17 OSHA related issue papers intended to point out areas in which OSHA seems not to have demonstrated effectiveness. The record is so

discouraging that on September 5th, 1974, Senator Williams, in a very, very strongly-worded letter which we also have attached to our statement, wrote to the U. S. Secretary of Labor Brennan asking, "immediate application of corrective measures", for some of the more serious problems and stating in the conclusion of his letter: "As a result of these findings, our Sub-committee has been forced to conclude that the Act has yet to be properly implemented."

I might add parenthetically that the Consumers League was involved in a similar situation relating to meat inspection in New Jersey in 1971. We became aware of the fact that funds were going to be cut out of the New Jersey budget for state meat inspection. This was supposed to be an economy measure. Unfortunately, the very month that that proposal was made, the General Accounting Office came out with a devastating report on the effectiveness of Federal meat inspections and they cited things like Federal meat plants that had not been entered by a Federal inspector for as many as seven years. We feel that the same kind of thing applies here. In theory, it was fine. We had a superior State law, we supported State enforcement of that law, and that is our philosophy now.

The latest, and in some ways the most alarming development is OSHA's proposal to lower the already low standards for the housing of migrant farm workers in labor camps. These proposals published in the Federal Register of September 23rd, 1974, were distributed by the New York Regional Office of OSHA on October 15th. The deadline for filing comments on the proposals was this past October 23rd. Michael S. Berger, Director of the Camden Regional Services Farmworker Division, brought this destructive proposal to the attention of participants in a Symposium on Farmworkers that was held on Saturday, October 19th, at Seton Hall University.

Petitions requesting an extension of time for filing comments and for a hearing before these new standards are put into effect have been filed by both the Consumers League and other organizations concerned about farmworkers.

I feel that we must make it very clear that in presenting these facts we are not condemning OSHA. On the contrary, the Consumers League of New Jersey and our national organization have long supported the philosophy of the Williams-Steiger Act. Our concern now is for effective implementation. Senator Williams' letter to Secretary Brennan and the report that went with it encourages hope that OSHA's problems may be on the way to solution. Certainly the oversight functions of the Labor Subcommittee are valuable. However, problem areas so disturbing will take time to correct. Meanwhile, the effect of the poor implementation means that the workers of New Jersey will be denied the protection they have a right to expect unless this State Legislature asserts its own right to protect them by a State law such as you are considering. We know that there are people who honestly think the Williams-Steiger Law should be entirely a Federal responsibility and that any State participation will only weaken it. However, the authors of the Williams-Steiger Law did not write it as an exclusive Federal responsibility. On the contrary, they stated in the preamble to the Act, that it is an Act "to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions: by providing for research, information, education and training . . ."

Again in Section (2) (b) (11) the Act provides that one means by which the purpose and policy of the U.S. Congress, "to assure so far as possible" those safe

working conditions is, and again I quote, "by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to develop plans in accordance with the provisions of this Act to improve the administration and enforcement" of the State laws.

In view of what we have heard about other states, in view of what we have heard about the need for additional Federal inspectors, in view of what we know about the need to establish standards and to train people, I think these purposes of the law can best be carried out by working in conjunction with the State plan.

The provisions quoted above and the detailed provisions of Section 18 on State Jurisdiction and Plans and of Section 23 regarding grants to the states that take advantage of the encouragement offered, all imply that the authors of the Act, while not making it mandatory for the states to use the state-federal partnership plan, give substantial encouragement to any state that "desires" to do so.

In closing, let me say that we do not pretend to know whether this is the best way, by passing this legislation before you. We think it is good enough for New Jersey to be worth a three-year trial and one of its advantages, in our opinion, is that it does not require the Legislature of this State to make a permanent decision now as to what we want permanently. The alternative of letting this bill die would probably be a permanent decision because the dollar cost alone of setting up and starting all over after OSHA has taken over would be prohibitive. The Federal government did give New Jersey a substantial grant to develop the plan incorporated in these bills you are considering, but it is extremely unlikely that they would be able to do that again.

Another advantage of the measure before you is that for the next three years, while it is being tried, New Jersey can assure our migrant farm workers the benefit of our superior housing code for migrant camps even if OSHA insists on lowering their housing standards. The provision that a State plan must be at least as effective as the standards of the Federal Act means that our standards can be better for farmworkers or for any workers if the State Legislature of New Jersey so orders.

I thank you for the opportunity to be here today.

(Complete written statement submitted
by Ms. Stochaj can be found beginning
on page 13 X.)

ASSEMBLYMAN JACKMAN: Let me thank you for your participation.

I have one or two questions I would like to ask you. Before I do, I want to commend you and your organization for your excellent statement. You are a real watchdog.

Isn't it true that if the State adopts this plan, the OSHA inspectors will no longer inspect in the State, but just monitor the State efforts?

MS. STOCHAJ: As I understand it, during the three-year administration under this plan, this will be purely a partnership and the Federal government may come in at any time that they have any questions or any complaints about the quality or the calibre of State inspections. Our concern is that there are not Federal people available to do this perhaps.

ASSEMBLYMAN JACKMAN: But they will not participate in inspections, only if they are called in?

MS. STOCHAJ: In terms of routine inspections?

ASSEMBLYMAN JACKMAN: Yes.

MS. STOCHAJ: Right. But, of course, you have heard earlier that our inspectors will be trained and are being trained now to comply with the Federal OSHA regulations.

ASSEMBLYMAN JACKMAN: One other question: I received your communication earlier. Was there an answer to the letter that was sent to Secretary Brennan by Senator Williams, to your knowledge?

MS. STOCHAJ: Senator Williams' letter is dated September 5th and at the end of it he says within 90 days his Committee will ask for a full report. Senator Williams' letter is attached to our document and he cites specific problems of poor recordkeeping, poor statistics - that OSHA has not exercised its proper authority. But we have no answer to that letter.

We have also written to Secretary Brennan -- I'm sorry -- to Mr. Meany, to ask him for a study that he says the AFL-CIO did on the 26 state plans. We have not yet received that either.

One of the things that has concerned us is that part of the talk that has gone around is that New Jersey will have a plan superior to the Federal regulations. I don't see any reason why New Jersey should downgrade the standards that we have already worked very, very hard to establish. And I was very much impressed with the point before that no dollar sign can be placed on safety. I think we have to say, yes, maybe we do have superior standards and, if we do, it would be something that OSHA could then look at as a state that has managed to come up with a plan, enforce it, and to perform better perhaps than any other state.

ASSEMBLYMAN JACKMAN: May I also suggest that you be present at our meetings of the Labor Committee. Since there are amendments being recommended by the sponsor of the bill, Senator Merlino, by the Chamber of Commerce and the Manufacturers Association, it might be wise for you to be there to give whatever input you care to give.

MS. STOCHAJ: As you know, our problem is that we

are a volunteer organization. I promise that we will be interested, we would like to comment, but I am not promising that we can always be at the meetings. But we certainly welcome the invitation.

ASSEMBLYMAN JACKMAN: Thank you very much.

MS. STOCHAJ: Thank you.

ASSEMBLYMAN JACKMAN: There is a gentleman in the room who has a problem. He has a sick child at home. So I will call Mr. Joseph Rosena, who is with the New Jersey State Employees Association, at this time.

A. J O S E P H R O S E N A: Thank you for allowing me to come here this morning.

My name is A. Joseph Rosena. I am the Vice President of the New Jersey State Employees Association. I have been a State employee for over twenty-five years. I have worked under many Commissioners: Carl Holderman, Raymond Male, Ronald Heymann, and Mr. Hoffman. In no case, working under any of these Commissioners, have I ever found where a Commissioner or a Governor has put on any political pressure for any intervention in safety. I want to make that clear.

We are in favor of the acceptance of the State Plan to enforce the Occupational Safety and Health Act.

The question which should be considered is very simple. Should the State of New Jersey continue to have control over the services to its citizenry or should we relinquish this control to the Federal government?

I am going to try to make the answer to this question obvious and simple.

Let's ask ourselves these two questions; the answer to these questions should indicate to us what should be done.

First, does the State of New Jersey have the necessary personnel and expertise to handle such a program?

New Jersey has been a leader in industrial health and safety since the start of the industrial revolution. In fact, a comparison of the safety standards we have been enforcing in New Jersey with that which the Federal government has finally come to realize are pretty exact. In fact, they have copied their standards from New Jersey's standards.

The personnel we employ to enforce New Jersey laws are second to none in the country. In a State such as ours where we have every conceivable industry from mining to missiles, we have kept the injury frequency and severity rates below the national average.

The second question is: Does the Federal government have the necessary personnel and expertise?

According to the Wall Street Journal, dated August 20, 1974, I quote: "If O.S.H.A. isn't doing all it might to reduce job injuries and illnesses, officials say one reason is that it lacks the necessary enforcement personnel. As recently as March, 10 percent of the authorized slots for compliance officers and industrial hygienists were vacant. We have just about cleaned out the supply of eligible applicants, one regional administrator says."

I ask you then, with a law a few years old with a lack of adequately trained personnel can we afford to have a bunch of amateurs protecting the lives and limbs of the wage earners in our State? It takes more than the passing of a law to protect lives; it takes people who are professionals to properly enforce the requirements of the law.

I now understand that because the Federal government cannot get the qualified personnel as compliance officers, they are lowering their standards.

We have estimated that besides displacing more than 200 State employees, if we elect not to accept the State

Plan and let the Federal government take over, the State Treasury would be losing more than one million dollars a year from revenue we would be collecting in fines. This money will be coming from New Jersey industries and will be going to the Federal treasury. I don't think this is what we want.

However, if we elect to accept the plan, the Federal government will finance 50 percent of the total cost for us to continue doing what we are prepared to do and do the job the way it should be done by experienced law enforcement personnel.

In conclusion, turning over the safety and health of the New Jersey citizens to the Federal authorities is irretrievable. The State employees who have shown that they are capable of doing an outstanding job in the field of safety are asking for the opportunity to continue to do this job and, if you feel after a reasonable time we fail to produce the required results, then the New Jersey State Employees Association will be the first to come to our legislators and ask to have the Federal government take over the program.

I have worked in the Division of Workplace Standards as a Safety Inspector, as a Senior Safety Inspector, and as a Supervisor. I am now in the Bureau of Migrant Labor as Assistant Chief. And I have, I think, knowledge of both areas in safety. I am very concerned about the largest employer in the State of New Jersey, and that is the State of New Jersey. About seven years ago, Governor Hughes established an executive order creating a Safety Program for State Employees. I was given the privilege of starting that program. In the three years that I handled that program, I visited many State buildings throughout the State and saw the deplorable conditions that the State employees were working under, and are still working under.

If the State Plan is not approved, the Federal government does not have any plan to protect the safety of the

public employees. And I implore the legislators to pass this bill so that we can give protection to the employees working for the State of New Jersey, besides giving protection to the constituents and the citizenry of New Jersey. Thank you.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Rosena, for your testimony.

Ladies and gentlemen, it is now half past twelve. We have a young lady in front of me taking stenographic notes and another young lady on my left who are State employees. Out of deference to them, I am going to call maybe one or two more witnesses. We will recess at one o'clock and be back an hour and a half after that, at which time I will continue the hearing until everyone has had an opportunity to speak.

Ernest T. Anderson, Union County -- What is that N-i-x-- Nixon on OSHA Committee?

MR. ANDERSON: It's not Nixon; it's Nix.

ASSEMBLYMAN JACKMAN: It has N-i-x-o-n. It looks like Nixon.

MR. ANDERSON: I put the dash there to make sure you didn't make any mistake.

ASSEMBLYMAN JACKMAN: I've got you. Have you a statement?

MR. ANDERSON: Just this one.

ASSEMBLYMAN JACKMAN: All right. Go ahead.

E R N E S T T. A N D E R S O N: I would like to thank you for giving me this opportunity to bring this statement to your attention, members of the Assembly and Mr. Jackman, Chairman. But before I go on with my opposition to OSHA - and this is what it's about - and the State implementation of OSHA guideline, as a businessman, I want you to know that I or anyone with my outlook does not have anything against health and safety rules and regulations. To the contrary, we are against the Federal

government calling the shots. We believe this is one more bit of bureaucratic nonsense and interference in states' rights and feel it to be one more step in socializing the United States.

The Federal government has interfered in our educational programs, our health programs, our commerce programs and our farming programs - our railroads, our airlines, our major industries and our minor industries. In fact, the Federal government is involved in every aspect of our lives. Many of these involvements are unconstitutional. But I am not here to discuss these many unconstitutional involvements. I am here to discuss the unconstitutionality of OSHA and the eventual effects on the status of our country.

There are those who feel that the states cannot handle the consensus standards set up by qualified safety engineers. They feel there is dishonesty and collusion between the owners, and rightly so, and the inspectors and the insurance companies, and rightly so, for there is always this possibility. So what is there to stop this collusion at a higher level where Federally-controlled inspectors are involved? Just take Watergate for an example. I believe that the initial attack by OSHA is being levelled at small and medium businesses on a gradual basis and then to a point of nonacceptance by these businesses, for they will not be able to comply and still operate on a profitable level. The large corporations will also be harassed to the degree of non-profficiency, for all costs are eventually passed on to the consumer, one of the main reasons today for the shortages and extreme high cost of living, and that is directly attributable to OSHA and many other bureaucratic monstrosities.

Let me give you a few current examples. Farmers must install roll bars on their tractors, even though there are many tractors on which roll bars cannot possibly

be attached, even though roll bars cost \$200 or more, which in many instances is more than an old tractor is worth. Even in the major farming region of the Great Plains, farm tractors are generally driven on level land and flat roads. Can you imagine the huge combines going across the plains with roll bars on them? OSHA requires a half-inch protective mesh on all motors and power-ventilated equipment. But in the poultry business, feathers will completely plug such screens within a few days.

Another example, a fellow by the name of Dan Callahan, a painting contractor in Pennsylvania, tells of an OSHA citation because an old dump truck being used exclusively as a container, never moved from its location, had improper brake lights and a cracked windshield.

Such outrages are in fact common. Many OSHA actions against employers reflect a vengeful attitude towards businessmen, while others seem to reflect merely the exasperating silliness of bureaucracy. Also forgotten is the intolerable recordkeeping, paper work, weekly reports, monthly reports, quarterly reports and the added cost of maintaining extra personnel for this purpose.

Ladies and gentlemen, there are thousands of such incidents occurring every day in our State and Nation. In many instances, the rules of OSHA had an adverse effect on a business community to the degree of causing accidents and even deaths. That is a matter of record. Then there are the bleeding hearts across the nation that are so wrapped up in the protection of the consumer's health and pocketbook that we now have the Consumers' Protection Agency also run by the Federal government. Well, what about the consumer's pocketbook when it comes to OSHA's limitless power over the construction industry which accounts for about a hundred billion a year of our gross national product? The construction industry has a

good safety record: 13.49 accidents for every million manhours of exposure. And most of those accidents -- listen to this -- most of those accidents are the result of employee negligence, not employer negligence, or I should say employee carelessness.

There is no possibility that OSHA will improve the safety record of the construction industry, but OSHA will add to the cost of construction immensely. Authoritative estimates of how much OSHA will add to the cost of construction range from 10 to 35 percent. This means that the utterly useless OSHA operations will add at least ten billion dollars a year to what American consumers must pay for homes, apartments, highways, streets, subways, office buildings, etc., etc., etc.

Now to get back to the constitutional question, one trade association is making a determined fight against OSHA; this is the American Subcontractors Association, whose general counsel is McNeil Stokes of Stokes, Boyd and Shapiro, in Atlanta, Georgia. Mr. Stokes has a group of cases which have been in litigation for months before the OSHA agency, itself, before the OSHA Review Commission and before U. S. Courts. He wants to get the cases eventually before the U. S. Supreme Court for a test of the constitutionality of OSHA. Here in brief is Mr. Stokes' constitutional argument against OSHA:

Number one, it imposes criminal penalties on employers without the due process of law required by the Fifth Amendment.

Number two, it denies employers the right to trial by jury in violation of the Sixth Amendment.

Number three, it provides for unreasonable search and seizure on an employer's premises in violation of the Fourth Amendment.

And, number four, it delegates legislative and judicial powers to an agency of the Executive Branch of government in

violation of the separation of powers principle.

Now, ladies and gentlemen, it is up to you and your consciences: Do we citizens of New Jersey handle our own safety and health programs or do we cry to Washington for OSHA guidelines, money and then controls? I ask you to do like other informed citizens in Oklahoma, New Hampshire and other states and tell OSHA to go pack it.

I recommend that we get behind Idaho's representative Steve Simms' bill, HR 11602 - that is HR 11602 - and beseech Congress to repeal OSHA, lock, stock and barrel - no amendments, outright repeal. An example of the pressure that is building across the country was printed in the July 8th issue of Time Magazine, titled "OSHA under Attack." Can you imagine Time Magazine printing this with their history of fabrications and falsehoods. They must certainly be concerned.

A few weeks ago, the following resolution was unanimously approved by the Florida House of Representatives: "Be it further resolved, the Congress of the United States forthwith examine the intent of the Occupational Safety and Health Act of 1970, for the purpose of altering its hazardous effect on the free enterprise system; that the Congress of the United States examine the conformance of bureaucratic rules and regulations with the intent of OSHA; and that the Congress of the United States consider the repeal of OSHA if its present inequities and deficiencies cannot be expunged by any other method available."

It is up to you. Do we move further down the road to total government, collectivism, socialism, or are we responsible Americans and accept the responsibility ourselves?

Thank you very much.

ASSEMBLYMAN JACKMAN: You evidently want OSHA to be repealed federally and statewide, I am assuming.

MR. ANDERSON: I would like the State of New Jersey to go on record and follow the Bill 11602 of Steve Simms like several other states will be doing for outright repeal. And let's have our State handle it as it has in the past. I am not against health and safety by any stretch of the imagination. But I feel that the State should be involved in that. And if there is new machinery and new implementations coming along, it should be done by the State. I feel that the owner of the business should be given consideration. After all, Rome wasn't built in a day. If there is a problem there, let's negotiate with them, explain to them, "this is the law," and make these responsible changes for the health and safety of the citizens that work in our State.

ASSEMBLYMAN JACKMAN: Then I assume you are recommending that the State plan operate.

MR. ANDERSON: No. I recommend that the State continue with the original guidelines and consensus standards that have been set up over the years by qualified safety engineers, not like, for instance, out in Oregon or Washington where there is a great unemployment problem and so engineers from one of the aircraft plants that was closed up was sent into the job, piecemeal, to be OSHA inspectors. They went into the lumber camps and were trying to implement the rules and regulations of OSHA in the lumber camp. Well, they were practically thrown out bodily.

ASSEMBLYMAN JACKMAN: I don't know whether you had an opportunity to read the New York Times like I did yesterday afternoon. There was an article in it that amazed me about the "hidden plague." It says in one part that over one hundred thousand persons die annually of occupational diseases. Now don't you see a need for an OSHA program in the State of New Jersey?

MR. ANDERSON: Do we have a record here?

ASSEMBLYMAN JACKMAN: Do you believe that the employer, himself, will take care of all the necessary evils that exist in a plant without somebody overseeing him or bringing it to his attention?

MR. ANDERSON: No, I believe that there is skull-duggery amongst some business owners where they try to get by cheaply where it would be harmful to the employees of the plant or place of business. But I also believe that responsible businessmen aren't foolish enough to have sick people in their place of business where it would cause a loss of money in lost time and production.

I happen to agree with you that there are many cases across the country coming to light now where there are unknown, hidden dangers. And I think these things can be taken care of. Again, I must insist that it be done by the State, itself, and not through any guidelines of the Federal government, because anytime the Federal government gets involved, it winds up costing us.

I made a few notes here, to give an example. You know, government employees are to be exempt from this particular law. What is wrong with government employees? Aren't they human too? I think there are many hidden aspects of this law and what they want to do is federalize your State inspectors. I think our State inspectors are qualified personnel that have been on the job a long time.

Regardless of my background, my interest is in the survival of our free enterprise system. I think that is foremost in my mind today. There are many instances where there is skull-duggery. But you were talking about money. The Federal government is going to give us 50 percent of our money back. Well, why don't we sort of withhold 50 percent from the government and spend it in our own State and maybe make it easier on

the taxpayers? This is one of the key issues, the cost. A lot of people say, "Well, damn the safety; let's save money." But we are not here to damn safety; we are here to protect the workers of the State. We are concerned about New Jersey. Whatever Pennsylvania or another state does -- that's states' rights. If they have a situation there, they should also implement a proper program. We are not the watchdog over Pennsylvania or any other state. But I feel we don't need Uncle Sam to be the watchdog over our State. I think we have responsible and qualified people who should be involved in this particular program.

ASSEMBLYMAN JACKMAN: I assume that you are in full agreement that we should make sure that the State has stringent laws on safety.

MR. ANDERSON: -- if those laws are absolutely necessary. I don't mean laws that are absolutely ridiculous that have nothing conducive to health and safety, that are just more of a harassment to the owner. To give an example, a friend of mine is in the automobile business. OSHA came into his place of business and said, "Do you paint automobiles here?" And he said, "Yes, I do." He was told, "That booth is not up to OSHA standards. You must put an OSHA spray booth made by Devilbiss."

ASSEMBLYMAN JACKMAN: I heard this story.

MR. ANDERSON: Right. It cost him over \$20,000 for a spray booth. Now what about the small businessman who has three or four employees. Can he afford a \$20,000 spray booth? Fortunately OSHA has not hit the smaller ones yet, but they will and eventually they will put those people out of business.

ASSEMBLYMAN JACKMAN: Let me ask you a question, Mr. Anderson. If \$20,000 is going to save two or three lives, do you think it would be worth the \$20,000?

MR. ANDERSON: I understand your point, but let me

make this clear. My life is worth more than \$20,000.

ASSEMBLYMAN JACKMAN: I don't want to debate with you.

MR. ANDERSON: Right.

ASSEMBLYMAN JACKMAN: But I don't think money is the criterion. And I don't think you want to leave that impression with me either.

MR. ANDERSON: Definitely not.

ASSEMBLYMAN JACKMAN: I read this interesting article and I understand they are making an investigation of vinyl chloride now. In some cases, they are checking back and they are finding that people are dying from vinyl chloride and heretofore this was taken for granted. Somewhere along the line - and I think in essence you are in agreement with this - we are going to have to consider this not from the monetary standpoint, but what we can do towards saving lives and making the job a little bit more easy and acceptable to the people who work in industry today. I think in principle you are in agreement with that.

MR. ANDERSON: Yes, but by the same token, I don't think that a businessman should be held responsible for his workers' attitude when he is not present. For instance, if they don't wear goggles and something happens, this man is under terrific indictment, and this is a case again of, how can you police every single employee in your place. You penalize the owner of the business to a point where he is a victim of this particular carelessness. Then Big Brother comes and raps him with a substantial fine. He just throws his hands up and says, "Let's close," like many businesses have.

ASSEMBLYMAN JACKMAN: Thank you very much, Mr. Anderson.

We will have one more speaker and then we will recess for lunch. Mr. O'Neil, we will give you an opportunity to make your statement now.

M I C H A E L J . O ' N E I L : Thank you, Mr. Chairman.

I am Michael O'Neil. I am appearing to present the views of the New Jersey State Chamber's Committee on Worker Health and Safety, of which I am Chairman.

Mr. Marchiate did suggest that you be able to identify the people who are here. And, for your information, my full-time occupation is Vice President and General Counsel of New Jersey Bell Telephone Company.

ASSEMBLYMAN JACKMAN: A good company.

MR. O'NEIL: Thank you, sir.

However, I do appear on behalf of the Chamber rather than for the company.

Rather than read the rather brief statement that I have submitted, I would like to just in two sentences summarize it and then comment on some of the things I have heard this morning. I enjoyed being at this end of the line because one is able to hear the diverse views.

The Chamber's Committee strongly recommends the adoption of either of the bills before you. My own practical suggestion is to adopt the Senate one. It has already been through the Senate and passed and you don't have to send it back.

In my report, a majority of the Committee recommends consideration of certain amendments, and to keep faith with my committee there is that report. But I have heard discussion of amendments and some of the same kind suggested by, shall I call it a brother or sister organization, the New Jersey Manufacturers Association. And I don't want Les Kurtz to be annoyed with me nor my committee by suggesting that I think at this eleventh hour in 1974, the consideration of the amendments, which, as you pointed out earlier, were you to deal with them would take considerable time, is not worth the price of admission. But I urge you to pass either of the bills as it stands, and this includes Senator Merlino's suggestion

for amendment of his own bill. And I have reasons for that.

Let me just say first that as an attorney for a large business and as a representative and participant with the Chamber now since 1961, I guess it was, when the idea of the existing New Jersey Workers' Health and Safety Law first came into being --- It took several years to get it going, but I remember attending in the waning days of the Meyner administration a conference on this over in the Stacy-Trent. But I have had exposure at least to large industries' attitude on safety. And they don't regard it as a partisan or a management-labor consideration or as a money consideration. I think some of them find that safety is more economical. But lay that aside; it is a personal thing and I don't think any of us is in disagreement that it is important and that the most effective program is the one to be desired. I think it is way past the time of discussing the constitutionality of the Federal legislation, and I am not going into that. I am certain it is constitutional; I am equally certain it is there.

Under the Federal law, the Williams-Steiger Act, if New Jersey does not enact legislation permitting it to implement the State Plan, which the Federal government has already approved and which, as Mr. Kurtz says, is three inches thick, and goes well beyond the language of either of these bills -- if that is not done, New Jersey is out of it. It is my own impression that if the fifty states had had legislation as effective as New Jersey's and had its record of enforcement with both management and labor and the professionals cooperating in it and assisting a fine, professional, able organization now five times as large as the highest estimate I heard here this morning of what the Federal enforcement group would be --- I have forgotten how this sentence started.

But if all states had had that, I don't think Senator Williams would have found the need for Federal legislation. I am sure it was meant to cover those states - and I won't try to name any states - which had no legislation or ineffective programs. We have the best of both worlds under this. We have the advantage of the Federal ability for research. If standards are adopted at the national level, they have to become State standards. We have no choice. Yet at the same time, as Commissioner Hoffman pointed out this morning, there are areas where New Jersey is well ahead of any of the Federal research on individual parts of the labor scene and where we have more effective regulations and knowledgeable enforcement. It would be a shame to see that go down the tube and lost.

Two kinds of amendments have been proposed here that I have heard, those referred to briefly in my own committee's report and at greater length in the New Jersey Manufacturers'. One of them deals with an independent Review Commission. Let me say that back in '72, Deputy Commissioner Heilmann invited comments on the State Plan -- I am not now talking of the legislation, but the State Plan -- from all segments - labor, industry and others. And this idea of an independent Review Commission was proffered to the administration for inclusion in the State Plan and was rejected, I believe in a governmental sense properly so, because in recent years New Jersey has been trying to get away from a whole raft of independent commissions. It is the executive's responsibility to enforce the law. The Commissioners of Labor, not only the present one whom I admire just as much as Mr. Marciante does - he worked for me for four years and I know what a vigorous man he is - but his predecessors, were equally as effective. And I don't think anyone need apologize or be worried about the administrative process working in New Jersey as it should.

There is a recommendation to keep the committee of

one hundred which existed before the Workers' Health and Safety Law. But there is provision in Section 14 of the current act for an advisory committee of twenty-five, which would be representative of all segments of business and labor and would have an opportunity to express its views on those regulations more severe that go beyond the Federal regulations. We have no say really - and I am not quarreling with that - in the Federal standards. But you have a machinery here that would enable this larger, more experienced organization than anything OSHA is able to present to us to enforce the Federal regulations as well as those State regulations which we might adopt. It is more appropriate to have local enforcement if it is energetic and good, and it is. I urge you, therefore, not to get distracted by considering independent review commissions or anything else. Adopt it as it is. We will have time to perfect the administrative procedures later on if it appears necessary.

Senator Merlino suggested an amendment which he may not have had occasion to realize is unnecessary in view of the details of the State Plan. And I recommend to you, Mr. Chairman, too - and I can't cite you the page or the section - but the Labor Department people, I am sure, can point it out to you quite quickly --- But there is a provision in the State Plan that on any inspection the employee representatives not only may, but must, be invited to participate. And there is protection there for the worker who makes a complaint. Retaliatory action may not be taken against him. All that has been very carefully thought out and has been approved by the Federal government. If you look at the definition of "State plan" in Section 3 (m), it is that which has been agreed to by the Federal government. So, incorporating that by reference, you are already incorporating a provision which allows the worker an active participation

in any inspection.

You have a good couple of bills here. I urge you, don't let us drop out of the whole picture by too much attention to details. I urge that you report out whichever of those bills you think might go through most expeditiously and urge your support for it on the floor.

(Written statement submitted by
Mr. O'Neil can be found beginning
on page 24 X.)

ASSEMBLYMAN JACKMAN: Thank you, Mr. O'Neil. I want to mention that the evaluation you just made is correct. It is already in the bill.

MR. O'NEIL: Right.

ASSEMBLYMAN JACKMAN: I will call that to the attention of Senator Merlino.

MR. O'NEIL: Yes. I don't want to embarrass him. It is a fat thing and I haven't looked at it in about ---

ASSEMBLYMAN JACKMAN: I have made a notation and my aide just again brought it to my attention. You can be assured it will be brought to Senator Merlino's attention.

Thank you Mr. O'Neil.

MR. O'NEIL: I think I have covered everything I wanted, sir.

ASSEMBLYMAN JACKMAN: We are now going to recess for lunch until 2:30, hopefully with some other members of the Committee; if not, I will be back to conduct the hearing alone.

(Recess for Lunch)

AFTERNOON SESSION

ASSEMBLYMAN JACKMAN: Howard Freund will be our first witness this afternoon.

H O W A R D F R E U N D: May I take this opportunity to thank the Labor Committee for affording me the privilege

of appearing today to express my views on OSHA.

In today's newspaper there was an article, I think, which goes in line with this, regarding the safety field, that the President of the United States has signed a bill today doing away with seatbelts. So it seems that after all these years that we had to have seatbelts in our cars for safety, the government now decides that we no longer need seatbelts. It is in today's Star Ledger.

Those who are acquainted with this bill know that we in New Jersey are greatly responsible for this bad bill because our junior senator, Harrison A. Williams, Jr., was the co-sponsor of OSHA (Occupational Safety and Health Act) which is also known as the Williams-Steiger Bill. I am pleased to report that Congressman William A. Steiger of Wisconsin has recognized the dangers of OSHA and has sponsored with 58 other co-sponsors Steiger Bill, H.R. 5996, which would provide consultive inspections by the Department of Labor to employers with 25 or less employees.

There are a total of 83 separate bills before the House Select Subcommittee on Labor regarding OSHA. In spite of the damage caused by OSHA, the Senate Appropriations Committee added \$5 million to the HEW-Labor Department appropriations bill to employ an additional 500 OSHA compliance officers, bringing the total to 1420. It also defeated a provision to exempt employers of 25 or less employees from OSHA inspections. This amendment would have excluded 90 percent of the nation's employers and 30 percent of the nation's employees from OSHA enforcement. In the past 3 1/2 years of OSHA, there have been 153,205 compliance inspections, 102,005 citations were issued with 525,357 violations and penalties of \$13,101,587 proposed.

Today, prophetically, is 45 years to the day that the stock market crashed on October 29th, 1929. You say it can't happen again because, "The Federal Reserve has a host of powers with which to regulate the economy. They can guarantee a steady stream of credit to stimulate the

economy." "The many government programs -- farm, highway, small business, public works -- and the regulatory powers over the stock market, labor, industry and banks stabilize the economy." "Production of every major industry is at an all-time high. More people are at work and more people have more money than ever before." "The amount of gold leaving the treasury is insignificant, especially in view of the real strength of the nation which is our productive capacity, our gross national product." This sounds reassuring doesn't it? Every one of these quotes was taken from news stories in 1929 just before the stock market crash.

I predict that not only will the stock market crash again, but that we will experience another depression that will make the 1929-32 period seem like a kindergarten lesson.

Much of the blame for what is happening in America today and what is coming, I lay at the feet of our legislators. The three factors that have caused our present situation are headed by inflation, and inflation is an increase in the money supply and comes about when government spends beyond its income, thereby inflating the currency to pay its bills.

In 1972, the Tax Foundation reported that we worked 2 hours and 34 minutes of each 8-hour working day to pay for Federal, State and local taxes. The Associated Press reported in March 1974 that the figure is now up to 2 hours and 38 minutes. The Federation of New Jersey Taxpayers Association claims that 44 cents out of every dollar we earn goes for taxes. Yes, gentlemen, government spending is one of the causes for the mess we are in, and that can only be done with the approval of our elected leaders.

Second, I blame the ecology movement for increasing our cost of living. In 1974, New Jersey firms are spending

\$2.7 billion for pollution control. Fourteen cents out of every dollar paid to a utility goes toward pollution control or some other environmental expense. This is a cost of business, and, make no mistake, it is passed on to the consumer in the higher prices we pay for everything we buy. Make no mistake, we would not be in the mess we are in today if Senator Henry Jackson and Senator Edmund Muskie had not sponsored the National Environmental Policy Act of 1969, which required "impact studies" before building. It led to the Clean-Air Amendments Act of 1970 and the Clean-Water Act of 1972.

This leads me to the third point, and why we are here today, and that is the Occupational Safety and Health Act which gives authority to the Secretary of Labor to set, "mandatory occupational safety and health standards applicable to businesses affecting interstate commerce." The only exclusion is government agencies and employees covered by other federal safety and health laws. The law gives OSHA the option of yielding its standards-making and enforcement powers to states that adopt occupational safety and health standards which are at least as effective as federal standards. That bill effectively covers the 13.5 million employers in the United States.

The bill is based on an article appearing in The New Republic in June of 1968, written by Ralph Nader and Jerome Gordon, calling for "a comprehensive federal program designed to end colossal inaction and penury by our society in dealing with the following conditions. Every working day 55 workers die, 8500 are disabled, and 27,200 are injured. . ." This same quote was the main argument used by the proponents of the OSHA Bill and was reported in House debate on the bill, held November 23rd to 24th, by Congressman Dominick V. Daniels of New Jersey.

The main argument of the proponents of OSHA is that deaths and injuries are caused by employers. Whether the

proponents of OSHA like it or not, it is good business for employers to practice job safety without prodding from the government. Job-caused injuries and sickness are costly. Job safety of American industry is better than portrayed and has been improving each year.

According to the National Safety Council's publication, Accident Facts - 1972 edition, in 1912, there were 18,000 to 21,000 workers lost their lives; in 1971, there were 14,200 deaths in the work force, and the work force was twice the size and producing seven times as much as in 1912.

OSHA came into existence on April 28th, 1971, and in its first full year of operation, OSHA cited employers for 102,860 violations. In the month of March in 1973, OSHA issued more than 18,000 citations.

On May 29th, 1971, OSHA published a 357,000-word set of rules and regulations, filling 250 pages in the Federal Register. Thirty days after their publication, they became the law of the land. In June of 1972, an additional 17 pages - that is 25,000 words - were added, making a total of 380,000 words of rules and regulations for the first 11 months of operation. The National Small Business Association estimates it would cost \$300 just to buy the documents showing the OSHA enforced regulations. With 13.5 million employers spending \$300 each, we come up with an expense of \$4 billion by American industry to stay within the law. If single copies of each rule, warning, poster, notice, explanation, clarification and document issued by OSHA were put in a stack, the first year, it would reach 17 feet high.

The television repairman with one helper is not only responsible for the safety regulations regarding television, but also the clothes hangers and the door latches in his toilet, that they meet with prescribed national standards.

OSHA has increased costs in the construction industry. Authoritative estimates range from 10 to 35 percent. OSHA could require the rewiring of practically every building in the United States that was constructed prior to 1971; that is, the 1971 National Electric Code. OSHA could require all stairwells, all heating and ventilating systems changed.

Before the Select Subcommittee on Labor of the House Education and Labor Committee, the NAM witness, Mr. Michale P. Stinton, manager of Safety and Loss Prevention at Dow Corning Corporation, said, "Large employers are still confused, and medium and small employers continue to be overwhelmed by the volume and complexity of OSHA standards and regulations."

Mr. Stinton cited a Labor Department study conducted to determine the cost in 19 selected industries of coming into compliance with an 85 decibel noise standard. The estimated cost of compliance would be \$31 billion.

To come into compliance with a 90 decibel BA standard (Bolt, Beranek and Newman noise study) OSHA noise regulation would cost industry \$13 1/2 billion.

In the Phyllis Schlafly Report for October, 1974, there is a story about OSHA and strawberries, which bears heavily on my testimony. Centralia, Illinois, for the past 80 years was famous for its strawberries, which enjoyed great prosperity in the Middle West and especially in the Chicago market.

It seems inconceivable that with strawberries at their highest price in history that farmers would discontinue production. Next year the production of strawberries in Centralia is expected to be 10 percent of this year's level.

It is not insects, weather, soil or lack of labor, but rather the plague of the 20th century, OSHA. OSHA sets standards for migratory farm workers' housing

and it leaked out in Centralia that OSHA will enforce strict housing standards for migratory strawberry workers.

These regulations would require strawberry farmers to provide 100 square feet of living space for each migrant worker, flush toilets and showers in each room and other amenities. The harvest period is two weeks and the capital investment to conform to the regulations is not economically profitable. The Illinois Migratory Farm Workers Housing Act only requires 60 square feet of living space and the farms are already licensed by the Illinois Department of Public Health.

The strawberry farmers point to one migrant camp in southern Illinois built under a Federal grant that cannot pass new OSHA regulations.

Thanks to OSHA, strawberries will be scarcer and more expensive; migrant workers will lose their jobs but the Federal bureaucrats will thrive and multiply on a declining tax base.

Now to get to the bill before you, Senate Bill No. 716 and Assembly Bill No. 833. It would be tempting to support the bills in the hope that through State control we might reverse the harm and the damage that the Federal program as administered by OSHA has already caused. It might be possible to find a bureaucrat to administer this program who would help not hinder the growth of American industry, which means jobs for the working man and prosperity for all.

What would be necessary to accomplish this is a complete dismantling of the OSHA program and, after reading the bills before you, the danger and the threat to the economy by these bills is overwhelming.

Remember this, that whatever happens in the nation will happen in our once prosperous State of New Jersey first,

and for the man who has lost his job and cannot find another, this is a depression regardless of what you call it. OSHA and bills like S-716 and A-833 are greatly responsible for the unemployment in New Jersey.

Thank you, gentlemen, and I hope you will heed some of my words.

ASSEMBLYMAN JACKMAN: Mr. Freund, I have one or two questions I want to ask you. Do you have an alternative to this particular bill?

MR. FREUND: I think Mr. Anderson brought out the point, if we can get back to having the State administer the standards for health and safety and not to use as a guideline the Federal OSHA plan, which has been disruptive to our farms in South Jersey -- I know there are many farms that have closed up in that area because they cannot conform to the requirements of OSHA. And this again is costing us jobs and causing this inflation and this coming depression.

ASSEMBLYMAN JACKMAN: I notice at the end of your statement you say, "OSHA and bills like S 716 and A 833 are greatly responsible for the unemployment in New Jersey." Isn't it odd that the Chamber of Commerce and the New Jersey Manufacturers Association are advocating these two bills? Do you think they want unemployment?

MR. FREUND: All I know is what I have seen in reading this bill. This bill says \$10,000 for each violation; \$1,000 for more violations. You are penalizing the employer. I just cannot buy that the employer is a heartless rogue who wants to kill his employees or prosper at their expense. I can't buy that argument. And I do not accept the argument of these other groups. I can only go by the facts which I have outlined to you. They come from the NAM reports, they come from the Dan Smoot Report, they also come from the business end of government, another book by Dan Smoot and the Phyllis Schlafly Report.

These are facts. I could cite many, many incidents where OSHA has caused nothing but damage. A good example might be the painters. OSHA said that because of fire hazards, you now have to have aluminum ladders. So when they started to put up these high aluminum ladders, they started to blow over in the wind. And we had more people injured as a result of some of the OSHA regulations. We have had loggers where they made them wear earcaps. Some poor fellow got rolled over on a log and nobody heard him screaming for 4 hours because everybody had earplugs in.

ASSEMBLYMAN JACKMAN: Mr. Freund, you gave a good example when you talked about loggers. Incidentally, that is my industry. I represent employees in the paper industry in the United States. Of course, paper comes from logs. If I ever told you how many people lost their hearing on account of the decibel intake within some of these plants, you'd be amazed. Our union has just made a movie showing what is happening to some of our members. At the end of twenty years, they find they have lost their hearing. It is on the same subject that you just mentioned.

I don't think we have all the answers. I don't think this legislation that we are talking about today is going to be a panacea for some of the ills taking place around the country. I would like to believe, however, that industry has a real stake in it just like the employees have. I do not believe that we are going to make industry move out of this State and go to another state where they are going to reduce the standards. As a consequence, if this happened, our State would be left with high unemployment. But I would like to believe that we have to put a value on an individual's life more so than we do on property. I would like to believe somewhere along the line

we are going to come up with some answers.

I think your statement has been constructive. I can assure you that everyone who comes before us is going to be given consideration. Also I can assure you that even though I have been pressured with respect to this bill from both the union standpoint and the manufacturing standpoint to have it moved out of committee, I thought I would be doing an injustice to the people of the State if they weren't at least given the opportunity to be heard, and then try to come up with some legislation, which may not be acceptable to everyone, but I would hope would be to the majority.

Again I thank you, Mr. Freund, for coming here and addressing us and giving us your views.

Does anyone else have any questions?

ASSEMBLYMAN BROWN: Mr. Freund, are you suggesting because of the problems that have existed as far as individuals not being able to hear because of the earplugs and other safety facilities that companies now provide -- are you suggesting that maybe these shouldn't be required on a lot of these jobs?

MR. FREUND: You are placing the complete onus on the employer by OSHA. The employer is the culprit. According to union contracts, the employer cannot go into the tool box in some businesses. An OSHA inspector can go into an employee's tool box and if he finds a burnt tool, the employer is fined. And if an employee does not have his hard hat on, it is the responsibility of the employer. The bill is stacked against the employer. It is stacked to the point where today you cannot compete in industry. If they enforce this wiring code, forget it. If they ever went into this building here, you have steps you could fall down and an OSHA inspector could close up this whole place. Yet you can't check on a post office. That is exempt from it.

ASSEMBLYMAN BROWN: I don't believe you answered my question. I wanted to know if you are suggesting that we eliminate these requirements for safety devices that have been designed for one's health and protection.

MR. FREUND: I say that they should be more practical or more reasonable. I would certainly rather have a man working than sitting home in the safest environment that might be, but he doesn't have a job.

ASSEMBLYMAN BROWN: Even if he is sitting at home and has his eyesight and has his hearing?

MR. FREUND: There is no reason why he should lose his hearing or his eyesight.

ASSEMBLYMAN BROWN: That was the purpose of a lot of these safety devices. They have been proven in the past. There have been a lot of hazards in many industries. They have designed safety glasses and devices to protect the hearing. A lot of people have lost their hearing. In some industries they have created new types of devices that indicate the effectiveness of a person's hearing. A lot of individuals are not aware that their hearing is very bad because of some of these conditions that exist in industry.

MR. FREUND: Probably the best example today is the auto seatbelt, which is in today's newspaper. Today the President signed a bill that it is no longer mandatory to have seatbelts. Yet before, everybody had to have a seatbelt or, heaven forbid, you weren't safe. Things change. I know as we get older the hearing goes back; the same thing with the eyesight. Is it always the fault of the employer, the fault of industry? I would like to think of employers as being part of the community, part of society, not at one another's throat, and that we are in this fight together for our country.

ASSEMBLYMAN BROWN: Isn't it also true that most companies have certain regulations and when an employee has a tendency to violate those regulations, there is disciplinary action taken?

MR. FREUND: Well, sometimes the union won't allow you to do that.

ASSEMBLYMAN BROWN: Isn't it true that there are disciplinary actions taken ---

MR. FREUND: Oh, yes.

ASSEMBLYMAN BROWN: --- and these go into arbitration and what have you before the union can make the determination as to whether it is allowed or not allowed, to find out who is guilty and who is innocent?

MR. FREUND: Meanwhile the employer is found guilty by OSHA. If you don't have that hard hat on --- There was a case where a fellow wanted to commit suicide. He pulled back some planks and jumped through them and committed suicide and OSHA came in and fined the factory for having an unsafe plant. These are facts I am giving you.

ASSEMBLYMAN BROWN: If the employee was involved as far as manufacturing certain items or making a certain mixture where there was a danger involved, if he inserted the wrong ingredient or what have you, are you stating that there still should be no disciplinary action taken against the employee, even though it is in violation of the instructions and regulations that have been handed down and given?

MR. FREUND: By all means, he shouldn't be able to get away with ---

ASSEMBLYMAN BROWN: The employer does have control?

MR. FREUND: He has a responsibility, but the employer is still fined.

ASSEMBLYMAN BROWN: He still has control of his employees as far as seeing that the regulations and rules

are carried out within reason?

MR. FREUND: Right. The union is involved in here protecting the working man and his working conditions.

ASSEMBLYMAN BROWN: --- as long as they are not violating the rules. They both have certain responsibilities.

MR. FREUND: Right.

ASSEMBLYMAN BROWN: My point is that the employer in providing safety measures and devices is rewarded at the end of the year when he figures his net income. These things are tax deductible. I don't see it as a tremendous hardship. If they are really concerned about the safety of individuals, the lack of which results in high accident rates and insurance rates, as you mentioned, then there should be no problem of their being willing to go along with the safety rules and guidelines provided here by OSHA.

MR. FREUND: You brought up an excellent point about the insurance. In order to get a lower rate, companies have to conform with safety regulations and you certainly don't need the government to tell you to do that. You know it is good business. You get a lower insurance rate. You made an excellent point.

ASSEMBLYMAN BROWN: That shouldn't be a problem then?

MR. FREUND: I just don't like the government to run our lives. I don't think it is that necessary. The protection of lives and property I know is a function of government and I want it for that function.

ASSEMBLYMAN BROWN: I have no further questions.

ASSEMBLYMAN JACKMAN: I want to go back and get clarification of one thing. You do not have any alternative to the present OSHA bill. You haven't recommended any alternative to this bill, have you?

MR. FREUND: No. I would say go back to the State running its own safety program the way we have had it in the past, plus the municipality end of it too.

We have municipalities that are involved.

ASSEMBLYMAN JACKMAN: Am I wrong then in thinking that you recommend 716 and 833 because ---

MR. FREUND: No, because this is a takeoff on the Federal bill. You have penalty clauses in here. You have regulations which you have to accept. Fifty percent of it would be funded by the Federal government. Your bills don't kick the Federal government out of it. They are still involved if they want to come in, and they use the wording "affecting interstate commerce;" that is everybody. That's the hooker in there.

ASSEMBLYMAN JACKMAN: You will agree in principle with me that, whether we like it or not, we are governed by laws.

MR. FREUND: I'd be happy to write a bill for you.

ASSEMBLYMAN JACKMAN: We may not like it, but we are. As an example, we have the Kidnap Law, which is a Federal law. In many cases the Federal laws supersede the State laws. I am sure you agree there have to be penalties. In other words, if you are violating the safety law to the detriment of your employees' safety and there is not going to be any penalty attached to it, you will just continue the violation and replace employees with others who are not as vocal.

MR. FREUND: Not necessarily. An employee may take you to court for having ---

ASSEMBLYMAN JACKMAN: If he takes me to court, it will be because of violation of what law? What law are we going to use?

MR. FREUND: Probably Workmen's Compensation or Disability Laws or Insurance Laws. I would like to write you a bill if you'd like. I'll write a bill.

ASSEMBLYMAN JACKMAN: It might be a good idea. It would be interesting. There is nothing wrong with it because I think we learn from one another.

MR. FREUND: Certainly.

ASSEMBLYMAN JACKMAN: Why don't you put in writing some of your ideas. I don't think anyone in this room has all the answers. I see a gentleman in the back, Mr. Pasquale, who has been I believe at almost every meeting of the Labor Committee that we have had. This gentleman has sat on many, many occasions patiently and waited and nothing has happened because of the time element. We have had sessions of the Assembly that have interfered with our committee meetings. Many times I have been frustrated that people have come down here who have businesses of their own to give us some input and have had to wait so long.

As I said before, Mr. Freund, we don't have all the answers. This is the reason I called this public hearing because I thought we might get some valuable input here. Then we would be able to discuss it objectively with experts within the State, in the Labor Department, in industry and in the unions, and come up with legislation that we can live with. I don't think anyone in this room is looking for an advantage. I would like to believe that a human life is more important than money. And I believe we have to put values where they belong. I don't believe in cutting off our nose to spite our face and enacting legislation in this State that is going to force industry to leave and go to neighboring states and operate just the way they want to operate, and then our people are unemployed.

I have said many times, we can breathe the best air and drink the best water, but somewhere along the line we have to afford that luxury of being able to live just with air and water. And I am not about to put industry out of business. However, I will tell you that I am going to put a real value on human life and I believe my colleagues feel the same way. But unless the violations that are brought to light are corrected, legislation

is going to be enacted. Whether it is going to be federally or whether it is going to be locally is another question. I am a firm believer in home rule. I believe sometimes that we have too much government. I would like to believe that we can handle our own linen, so to speak.

Hopefully, from this hearing today, we will be able to come up with a bill that will be acceptable, perhaps not in its entirety to everybody, but to the majority.

Thank you for your testimony this afternoon.

MR. FREUND: Thank you, Mr. Chairman.

ASSEMBLYMAN JACKMAN: Is Lucy MacKenzie in the room? (Not present.)

Mr. Pasquale, would you care to address us? You have been very patient. Mr. Pasquale has been at almost every meeting of our Labor Committee. He has made a fine contribution on many occasions. Unfortunately, many times meetings had to be curtailed and he didn't always have an opportunity to express his views. I am very happy that he is able to be here today.

P E T E R P A S Q U A L E: As a contractor here in the State of New Jersey, I feel we need the State Plan for OSHA for the following reasons:

The first reason is that our own safety people from the Department of Labor and Industry have proved themselves already as far as performing their jobs properly. These people are capable of enforcing OSHA safety standards. The reason why these people can enforce them properly is because our present safety standards here in the State of New Jersey are similar to the Federal standards, plus our State safety people were at one time employed in the industry, so they do know how and where to apply the OSHA safety standards.

There seems to be a lot of talk about unemployment.

If the Federal government takes over our safety program, our present safety people would probably be unemployed. I think it is about time legislators start giving some thought to small businessmen and industry in general as to what the impact can be if the Federal government took over our safety program that we have now and hired new inspectors that were not familiar with the laws or, better still, their application.

Another problem is Federal programs being cut back. President Ford has indicated in the last few weeks a need for Federal spending to be cut back. In my opinion, this would also include the OSHA program. So if the Federal government takes over our safety program and the government programs were cut back, we could very well be operating with little or no programs on safety.

The other problem that exists is the Federal government getting too involved in the administration part of a program when it infringes on the State's powers. I realize that all the states are confronted with the problem of a state plan or having the choice of the Federal government taking over their safety departments. So we are stuck with a Federal program, but keep the administering of it out of the Federal government's hands.

I realize that our people here in the State of New Jersey depend on the Federal government for funding of thousands of projects. We must not let the government of the United States try and run our State and any of its programs.

So I say to you, Assembly Labor Committee, let bill A 833 or Bill S 716 out of your committee so that the Assembly may vote on it. I don't think it is fair to our contractors or business people to let this bill be bogged down in your committee since the beginning of last spring. Thank you.

ASSEMBLYMAN JACKMAN: Thank you, Mr. Pasquale. I don't think there is any need for me to ask any questions. You have made a fine contribution; you always have.

Is Mr. Rubin in the room? (No response.)

Mr. Rich Salzweder, Director of Safety, New Jersey Heavy and Highway Construction Industry Advancement Fund.

R I C K D. S A L Z W E D E L: Good afternoon. I am Rick Salzwedel and I am Director of Safety for the Construction Industry Advancement Fund.

The New Jersey Heavy and Highway Construction Industry Advancement Fund is an organization composed of approximately 850 contributing construction firms involved in one or more classifications of construction in the industry. The contributors to CIAF employ approximately 15,000 workers. CIAF is supported by three major organizations in the State known as the New Jersey Asphalt Pavement Association, the Utility Contractors Association of New Jersey, and the Associated General Contractors of New Jersey. In view of the magnitude of the construction work force employed by the CIAF contributors, we feel that an effective safety and health program is essential to the well-being of the construction work force which is the lifeblood of our industry.

We in the construction industry have worked very closely with the New Jersey Department of Engineering and Safety staff. A fine cooperative relationship has been developed which is mutually beneficial to both parties and one which we desire to continue. We are in favor of the New Jersey Occupational Safety and Health Act. We wish to see A 833 released from committee, and passed into effect.

New Jersey's present occupational safety and health program has the experience of almost 90 years. In that time, fair standards, reasonable and consistent enforcement have

developed. One example of New Jersey's effective enforcement can be shown by a look at the 1972 records. In 1972, the State of New Jersey found and corrected 85,000 violations while on the other hand OSHA only found 35,000 violations.

In our opinion, local control over occupational safety and health is superior to Federal enforcement. This philosophy was recognized by the Congress when it made the provision in the Occupational Safety and Health Act for the State plan.

We in the construction industry want to continue New Jersey enforcement of the safety and health code. The people in the New Jersey Department of Engineering and Safety are knowledgeable, dedicated and cooperative. We are convinced that the Federal officials do not meet this high standard and enforce the code without regard to the many problems involved. This would be extremely detrimental to all contributors to CIAF, and many other New Jersey businesses.

CIAF would like to thank the committee for allowing us the opportunity to come before you and express our support of A 833 (New Jersey Occupational Safety and Health Act.)

ASSEMBLYMAN JACKMAN: Thank you very much.

Is there anyone else who wishes to be heard?

MR. YEAGER: Yes.

ASSEMBLYMAN JACKMAN: Is your name on the list?

MR. YEAGER: Yes. You may have called my name and I was out on the telephone.

ASSEMBLYMAN JACKMAN: That's all right. Mr. Yeager is the New Jersey Legislative Chairman for the United Steelworkers of America.

J O S E P H P. Y E A G E R: Thank you, Mr. Chairman, for giving our union an opportunity to testify. As you heard, I am Joseph P. Yeager, New Jersey Legislative Chairman for the United Steelworkers of America, AFL-CIO.

As Chairman, I represent 156 local unions in the State of New Jersey with a membership of well over 50,000.

Under Section 18 (b) of the Occupational Safety and Health Act, states have the option, I repeat, the option, to submit a state plan describing their safety program and identifying the statutory authority upon which the program would be based. Upon acceptance of a state plan, the Federal government will cede back jurisdiction over workers' safety.

It should be noted that Section 18 (b) only gives an option to the states to submit a plan. It is not obligatory. The United Steelworkers of America is urging that the State not exercise that option so that OSHA will not be defederalized.

At the October 25th Conference of the United Steelworkers Legislative Delegates, a resolution was passed rejecting labor endorsement of state plans:

"The United Steelworkers of America is convinced that the defederalization of OSHA through substitution of a multitude of state programs for a strong program federally administered by the Department of Labor is contrary to the interests of working men and women. Once authority is fragmented into many state pieces," and there are fifty states, "it will be impossible to police the performance of the enforcement authorities to assure that they do their job. . . . The Labor Department should no longer hide behind the delusion of state enforcement. Workers have fought for federal responsibility. They now deserve full federal implementation."

As spokesman for the Steelworkers Union, our objective is full Federal enforcement. The labor movement has always supported Federal standards and a Federal administration of issues affecting workers, for example, unemployment compensation, workmens compensation, labor-management relationship.

Thus, even though the states may take back jurisdiction, there is no reason why labor should support that effort. The end result would again be fifty varying dispersed enforcement activities wherein each state would compete with one another for the lowest common denominator in enforcement.

A multitude of varying procedures and standards would be prescribed by the states, leading to great confusion and uncertainty in enforcement.

Just last month, in response to determined labor opposition, Governor Shapp of Pennsylvania withdrew that state's plan, stating that he recognized the paramount importance of a uniform, nationwide system of safety and health regulations.

Recently in Massachusetts, the State AFL-CIO was able to defeat the state plan in the Legislature. We urge you here in New Jersey to do likewise.

OSHA was enacted to provide protection for the worker. It is a worker's bill. It is hoped that the mechanism of the Act will remain intact and its enforcement not be fragmented. As our International President I. W. Abel stated in a letter to all local unions on January 7, 1971, the implementation stages must be ". . . monitored by the labor movement in order that the full potential of the bill will be reached and workers, who will never work in a paradise, need not be required to work in a jungle."

Mr. Chairman, that is my prepared text. However, I would like to supplement my remarks very briefly.

The National Safety Council estimates that 14,200 people are killed and another 2.2 million disabled each year by on-the-job accidents. Now our union looks seriously upon this matter and we think it is a great responsibility as the bargaining agent for these workers.

We are not here to criticize the State Inspectors nor

are we here to attempt to eliminate their jobs. These men have done basically a fairly decent job. What I would like to call to your attention is if we allow the states to each adopt their own program and fragmentize the national OSHA law, then we will not get proper monitoring.

Labor's position originally on OSHA was for a much tighter monitoring than the act now calls for. The monitoring is currently being done by the Federal government. States that have adopted a plan are now pressuring the Federal government to relax and weaken monitoring. Furthermore, state plans would allow for pressure to build up to amend the current act, and this the United Steelworkers opposes.

Finally, I would just say that the United Steelworkers has a membership nationwide of well over a million three hundred thousand people and we have a good relationship with the steel industry. The company and the union may disagree on many matters, but the matter of safety and health of the workers is one that both the company and the union have really cooperated on. We have things negotiated into our agreement, such as joint walk-around, paid-for committees. So, therefore, this is not an attempt by us to do anything but constructive criticism of what the current bill before us calls for.

I would also like to relate to you that, although my responsibilities are on a statewide basis, I come from Burlington County and just recently we had five deaths in the steelworkers union membership, three of them were employees of U. S. Pipe in Burlington, New Jersey, and two were employees at DeLaval in Trenton, New Jersey. Indeed, this is a very tragic thing, Mr. Chairman, when people are confronted with accidents on the job. It would tear your heart out if you had to go face the widow or the children of the families that are denied their

basic wage earner.

Really what I am saying to you, Mr. Chairman, is that we are not out in any way, shape or form to criticize the current state structure or to eliminate the so-called inspectors, and I know there is a concern in their minds. But if you really look and search, you will find that the current act calls for consultation services. And in many situations where the State Inspector cannot go to school or be educated to promote himself to a Federal OSHA Inspector, I believe you could well utilize the remaining work force in the field of consultation services. This would be for all employers and unions alike. I am told by our Washington Office that Federal funds are now available. It has passed both Houses and these funds are currently only pending a further meeting of the Conference Committee.

Mr. Chairman, with those remarks, I submit that is our position.

ASSEMBLYMAN JACKMAN: Let me thank you and let me say, knowing of your organization and working with it over the years, you don't have to make any excuses or any apologies because I know that the Steelworkers of America are leaders in safety for their members.

I am sure you will agree with me that we are all anxious to make sure that our people work under the best conditions. The thing that frightens me more than anything else is that somewhere along the line in our government structure, we don't always put the values where they actually belong. I don't know whether OSHA has a sufficient number of inspectors to do the job in the various states. This is the thing that frightens me. You mentioned the fact of going to a widow and I don't think anybody relishes the idea of having to notify an employee's wife or family that their husband or father, or what have you, was killed in an industrial

accident.

I am hoping that with your input and the input of various other groups in this State that we will have legislation that we all can live with. But the values are going to be put where they should be and that is in the safety of the individual who works every day for a livelihood. I think you are in agreement with that.

MR. YAEGER: Yes, Mr. Chairman.

ASSEMBLYMAN JACKMAN: Mr. Yaeger, let me thank you again for your attendance here this afternoon and thank you for your patience. We appreciate it very much.

MR. YAEGER: Thank you.

ASSEMBLYMAN JACKMAN: I believe there is one other gentleman who wishes to be heard. Your name, please?

MR. DECKERT: John Deckert.

ASSEMBLYMAN JACKMAN: I apologize, Mr. Deckert. Your name was listed here. Would you come forward please. Your affiliation is what?

MR. DECKERT: Nix-on OSHA Committees.

ASSEMBLYMAN JACKMAN: Nix-on OSHA Committees.

All right.

J O H N L. D E C K E R T: My name is John Deckert. I reside in the Forked River area. I represent the Nix on OSHA Committees - that's a play on words there - of Central and Southern New Jersey. These are temporary or ad hoc committees of the John Birch Society, of which I am a staff coordinator.

I take issue with some of the statements. I would like to at least add something that I have here; and, that is, that the Director had mentioned that we are in a new era of safety and health and mentioned statistics as far as people being injured, etc. You will have to excuse me. I have taken notes. I don't have a prepared statement for you. But we will see more of it, the Director says. I feel very badly about that for this reason, that

there is a lot of confusion. Those of us who disagree with this program are categorized as those who disagree with safety or health in any form whatsoever. Our basic disagreement is implementation, implementation of the program, how it is being done.

So if fifty percent of the revenue is coming in from outside, there is going to be outside control. The Supreme Court has stated that anything that the Federal government subsidizes it will control. They have stipulated that. What we are worried about here is local control versus centralized control, out of our hands.

There is no choice in this type of a system. What we are trying to preserve is freedom of choice. We believe, and our contention is, that the free enterprise system is under attack in the United States, that the individual businessman is being driven to his knees unnecessarily through outside controls and stipulations and regulations which can be enforced locally.

Mr. Dan Smoot was mentioned by Howard Freund. He is a former assistant to J. Edgar Hoover and he wrote this book called, "The Business End of Government," showing how the regulations have been placed upon the private businessman. Again we are talking about the employer being penalized. So what we must do, just to quote from one particular portion of his chapter on OSHA, is this: (Mention was made by one of the speakers earlier this morning of carnage.) "We must have Federal legislation to stop the ghastly slaughter of American workers. The promise was that the Federal job safety legislation would eliminate deaths and injuries being suffered by employees of businesses. The implication of this promise was that if business had done without Federal legislation all that the legislation would require them to do, there would have been no work-caused illnesses and accidents. The job safety legislation had no provisions requiring

safe behavior by employees or placing any obligation for safety upon them. Obviously then, the total blame for all deaths and injuries suffered by employees of business was placed exclusively on businessmen."

Now I have at my disposal films which I take around to Rotary and Kiwanis Clubs, etc. One is called, "The OSHA Controversy." This is giving the other side. There are men who have been here today talking about the fact they didn't want the Federal OSHA program, but by implementing these two bills you are proposing, one being #716, we have still done this. We have implemented the Federal program and here on the last page it is stipulated, "Under the federal Williams-Steiger Occupational Safety and Health Act of 1970, P. L. 91-596. . . , the states were given the choice of conceding total jurisdiction over the occupational safety and health field to the Federal Government or of resuming regulation and enforcement in partnership with the Federal Government through the formulation and adoption of a State Plan, of which this legislation is an essential part."

Now, according to my understanding here today, this can be preempted if we don't comply with what the Federal government says in this legislation. This is extremely dangerous. We are for safety. I am for safety. I am a former commercial fisherman. I know in some instances in some occupations the hazard is much greater than in others. Up to five months ago, that was my position and that is where my heart is really and I want to preserve that option. That is why I am here. But there are certain businesses where you have a higher degree of hazard and there is no way that you are going to legislate responsibility. That is up to the individual.

I have a couple of notes here on statistics. Let me give you a statistic from our "Review of the News." I forgot to mention I am also advertising and sales

representative for "American Opinion Magazine," which I have here and "Review of the News," which are both affiliate publications of the John Birch Society.

Mr. Alan Stang has written an article on OSHA. He has written more than one. But in this we have the documentation as to the accident rate since 1933. Now in the film which I show, "OSHA Controversy," there had been no statistics up to that time as to whether OSHA had been effective. In other words, till the date of the filming, Mr. Santarelli out in Region 9, stated that there aren't any facts compiled yet as to whether OSHA has been really effective in combatting accidents.

Here is what happened in 1933. There were 14,500 workers killed in work accidents in 1933 with a work force of 39,000,000. In 1971, there were at this particular point - let's see, 100,000 -- with a work force of 80,000,000 workers in 1971, there were 14,500 (sic) workers killed, which is 14,500 too many. We all agree to that. But you see what percentage the death rate has dropped and how high the work force has gone. The increase in the work force is tremendous. There is always some hazard. Just walking down the steps outside, you could kill yourself. There is always a hazard somewhere.

What we have to remember is that we have to retain local control over our lives and there are priorities, and freedom is a priority. In my estimation it takes priority over life itself or I wouldn't even be here today. There are some people who choose to take a little more risk than others. That is their right and that is their prerogative as long as they do not harm someone else. And no government has the right to tell you or mandate this kind of a system upon you when 5,000 businesses already have gone under because of it.

ASSEMBLYMAN JACKMAN: I don't mean to interrupt you, but can you name any in the State of New Jersey that went out of business because of OSHA?

MR. DECKERT: I can name one fellow I spoke to in the trucking business. Do you want me to give his name? I don't know whether he would like me to do that. I haven't asked his permission. He is in the trucking business in Forked River.

ASSEMBLYMAN JACKMAN: I don't mean to be facetious. Statistically you may be right. But you said you know of five thousand.

MR. DECKERT: I don't know all of the five thousand. But I do know of some. In fact, there is an engineering company down in Mayetta, New Jersey, which is on the coast in the Forked River area south of Forked River. They are very much fed up with the regulations. So they are on the verge - they are on the brink.

ASSEMBLYMAN JACKMAN: Do you know of one man?

MR. DECKERT: I do know of one man who is selling out.

ASSEMBLYMAN JACKMAN: You know of one man. If you only know of one man in the whole State of New Jersey who went out of business because of OSHA, that's a hell of a good record.

MR. DECKERT: First of all, I have a certain area which I cover. I don't get to talk to every businessman, only a few, only in my travels in connection with this magazine.

Basically what we are concerned with here is not that we need safety; it is the implementation of it. When you relinquish control to an outside agency, you relinquish your freedom, and that is what is at stake.

ASSEMBLYMAN JACKMAN: Do you believe that it is necessary to have safety laws and regulations?

MR. DECKERT: Oh, of course, locally controlled, sure.

ASSEMBLYMAN JACKMAN: You don't believe they should be controlled federally.

MR. DECKERT: No.

ASSEMBLYMAN JACKMAN: Do you believe they should be controlled statewide?

MR. DECKERT: I think if a state --- In other words, our system of government is republics within a republic; the republican form of government.

ASSEMBLYMAN JACKMAN: We know that.

MR. DECKERT: All right. I want to let you know that I knew it. With this particular type of government which we have, which is the best ever devised by man, we practice individual responsibility and we also practice responsibility as states within that republic. And we can enforce our own regulations responsibly. We don't need a centralized authority telling us what to do. It is as simple as that. It is plain logic.

I just have a couple more notes here to make sure I didn't skip over anything here.

What we want to do is this - not fool around with this type of thing, but repeal OSHA. At this particular point, we have 50 co-sponsors to a bill in Congress now. Stephen Simms of Idaho has introduced a bill which was mentioned earlier, HR 11602, to repeal OSHA, to kill OSHA, get rid of it. Don't pull the teeth out of it; don't amend it; kill it. It is unconstitutional. Mr. Dan Smoot, former Assistant to J. Edgar Hoover, says OSHA exercises all the powers of government, legislative, executive and judicial, in violation of the most fundamental American constitutional principle that these powers must be kept separate. In other words, OSHA is its own judge and jury. You have no appeal, only back to an appointed agency of OSHA. That is not in accordance with the Constitution.

So we would hope that all the legislators and the Committee would please consider this in their actions.

I would like in closing to say at this particular point, the way things are going in our country, we are in a very serious situation. I think we all realize that. To all our elected representatives and myself, being a former candidate for Assembly last year on the American Party ticket, and I was a candidate for Congress this year on the American Party ticket, but I withdrew in order to take my present position, I would say we are serving notice upon all our elected representatives that the Americans are coming, and we do mean every business, every step of the way.

I want to thank you very much for allowing me to address you.

ASSEMBLYMAN JACKMAN: Thank you very much, Mr. Deckert.

Is there anyone else who wishes to be heard? If not, let me express my sincere thanks to our Legislative Aide, Mr. Ben-Asher, and the two young ladies who have been taking down the testimony, to the participants in the hearing and to all people who sat very patiently. Thank you all.

The hearing is concluded.

(Hearing Concluded)

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ATTACHMENTS TO STATEMENT OF JOSEPH A. HOFFMAN,
COMMISSIONER, DEPARTMENT OF LABOR AND INDUSTRY.

STAFF

Approximately 198 New Jersey State employees are engaged in activities involving protection of workers' health and safety in this State, made up as follows:

Inspectors - Industry	46	
Construction	14	
Explosives	4	
Migrant Labor	23	
Supervisors	<u>13</u>	100
Industrial Hygienists		7
Nurse Consultant		1
Safety Education Officers		5
Plan Examining Engineers		13
Code Writers		2
Administrators		12
Clerical people		<u>58</u>
TOTAL		<u>198</u>

REPORT OF STATE PLAN REVIEW ACTIVITY

Approved Plans		Enabling Legislation		Plans in Review Process	
		Passed	Without Legislation		
				Enabling Legislation Passed	Without Enabling Legislation
So. Carolina	(11/30/72)	X		Arizona	X
Oregon	(12/22/72)	X		Rhode Island	X
Utah	(1/4/73)	X		Guam (RO)	X
Wash.	(1/19/73)	X		New Mexico	X
N. J.	(1/22/73)		X	Arkansas ^{1/}	X
N.C. Carolina	(1/24/73)	X		Delaware	X
Calif.	(4/24/73)	X	X	F. R. (RO)	X
N. Y.	(5/14/73)		X	Mississippi	X
Minn.	(5/29/73)	X		Texas	X
Md.	(6/28/73)	X		Missouri	X
Tenn.	(6/29/73)	X		Florida ^{2/}	X
Iowa	(7/12/73)	X		Dist. of Co.	X
Kentucky	(7/23/73)	X		Alabama	X
Alaska	(7/31/73)	X		Idaho ^{1/}	X
Virgin Is.	(8/31/73)	X		W. Va.	X
Colorado	(9/7/73)	X		Maine	X
Michigan	(9/25/73)	X		Mass.	X
Vermont	(10/1/73)	X		Okla. ^{2/}	X
Illinois	(10/30/73)	X		A. Sam. (RO)	X
Connecticut	(12/28/73)	X			
Hawaii	(12/28/73)	X			
Nevada	(12/28/73)	X			
Indiana	(2/25/74)	X	X		
Wisconsin	(3/1/74)		X		
Wyoming	(4/25/74)	X			
Total	25	22	3	19	15

Other		
Plans Withdrawn by States	Plans Rejected by OSHA	No plans submitted
Pennsylvania	Virginia	Ohio
Georgia		Louisiana
North Dakota		Kansas
New Hampshire		Nebraska
Montana		South Dakota
		Trust Territories
Total 5	1	6

^{1/} Certification of Approval pending passage of proposed legislation
^{2/} State has requested that plan be held in abeyance.

SUBMITTED BY LESTER KURTZ, N.J. MANUFACTURERS ASSOCIATION

APPENDIX I

S-716/A-833 implements the intent of New Jersey to reassume the enforcement of safe and healthful work rules which responsibility had been preempted by the federal Occupational Safety and Health Act (Williams-Steiger Act of 1970). The New Jersey plan had been submitted on July 3, 1972 and was approved by the Assistant Secretary of Labor on January 22, 1973.

S-716/A-833 is the first step in implementation of reassumption of State control over the safety program which will be completed over a three-year period. Your Association views State control as a desirable objective.

WHAT S-716/A-833 WOULD DO

S-716/A-833 would repeal and supersede the following statutes:

Worker Health and Safety Act	Explosives Act
Construction Safety Act	Liquefied Petroleum Gases Act
Mercantile Establishment	Fireworks Regulation Act
High Voltage Proximity Act	Mine Safety Act
Railroad and Airline Sanitation Act	

Primarily, S-716/A-833 would be applicable to any place of employment except that over which the Federal Government reserves exclusive jurisdiction.

The Commissioner of Labor and Industry could enter into agreements with the U. S. Secretary of Labor and State agencies as necessary to accomplish the purposes of the Act. (For example, enforcement of radiation sources would be left to the N. J. Department of Environmental Protection.)

Duties:

S-716/A-833 would require each employer to furnish a place of employment free from recognized hazards causing or likely to cause death or serious physical harm to employees. Each employer would have to comply with all rules and orders promulgated. (The Federal Government reserves the right to enforce the Federal OSHA General Duty clause any time -- anywhere.)

Each owner of any place of employment would be responsible for structural adequacy, protection against fire, general lighting, emergency egresses, fire warning systems and safe elevator systems.

Occupational Safety and Health Rules:

Where the Secretary of Labor has adopted a Federal standard, publication in the New Jersey Register would make it applicable to New Jersey.

The Commissioner could request an advisory committee to make recommendations for the promulgation of rules where no Federal standard exists or to modify or revoke a standard. Publication would be required in the New Jersey Register. Interested persons would be given 30 days to submit comments.

Emergency Temporary Rules:

The Commissioner would have authority to adopt an emergency temporary standard immediately upon its issuance and publication in the Federal Register by the Secretary of Labor. The standard would have to be published for a minimum of three successive days in at least five newspapers in the State to provide notice of the Commissioner's intent to enforce the rule.

Where no federal emergency temporary standard has been provided, the Commissioner could provide for an emergency temporary rule after similar publication (minimum five newspapers, three days as above). Within six months, upon publication of intent within 60 days of the expiration of the six-month period, he could either supersede the emergency standard or determine that no rule should be issued.

Warnings, Protective Equipment and Medical Examinations:

Any rule promulgated would prescribe use of labels or other forms of warning, where appropriate. It would prescribe suitable protective equipment and control or technological procedures to be used and the types and frequency of medical examinations or other tests which would have to be made available by the employer or at his cost.

Judicial Review:

Any person could, prior to the forty-fifth day after the promulgation of a rule, file a petition challenging the validity of the rule with the Appellate Division of the Superior Court. Filing of the petition will not stay the rule unless ordered by the Court.

Temporary Variance Orders:

Any employer could apply for a temporary order granting a variance if he:

- establishes he is unable to comply because of the unavailability of professional or technical personnel or of materials and equipment needed or because construction or alterations cannot be completed by the effective date;
- is taking all available steps to safeguard employees against the hazards; or
- has an effective program for coming into compliance as quickly as practicable. The order could be granted only after notice to employees and an opportunity for a hearing and no temporary order could be in effect for longer than needed by the employer to achieve compliance, or one year, whichever is shorter.

Variance Rules and Orders:

An employer could apply to the Commissioner for a permanent variance from any rule promulgated. The affected employees and their representatives would be given notice of each such application and an opportunity to participate in a hearing.

Plans and Specifications:

The Commissioner would be authorized to require owners of any building intended as a place of employment to submit plans and specifications for his approval before construction. In addition, he would have the power to review plans and specifications prior to installation of sanitation facilities, fire protection, egresses, exhaust and ventilating systems, elevators and other conveying equipment.

Inspections and Investigations:

Inspectors would be authorized to enter any workplace to inspect and investigate the structure, equipment and work conditions during working hours and at other reasonable times.

They could question any owner, employer, operator, agent or employee.

They could require the attendance of witnesses and the production of evidence under oath. Witnesses would be paid the same fees and mileage paid witnesses in the courts of the State under rules issued by the Commissioner.

A representative of the employer and of the employees would be given an opportunity to accompany the inspector during the physical inspection.

Any employee or representative of employees who believes a safety violation or imminent danger exists could request an inspection by giving notice to the Commissioner. The notice would have to be in writing, give particulars and be signed by the employees. A copy would have to be given the employer except that upon request of the person giving notice, the names of the employees could be omitted.

Prior to and during any inspection, any employee could notify the inspector conducting the inspection, in writing, of any suspected violation.

Recordkeeping:

Employers would be required to keep such records as the Commissioner might prescribe by rule for the enforcement of the Act, or for developing information regarding the causes and prevention of occupational accidents and illnesses. The Commissioner could require employers to conduct periodic inspections. Notices would have to be posted and employees kept informed of their protections and obligations including applicable occupational safety and health rules.

Employers would have to keep accurate records and make periodic reports on work-related deaths, injuries and illnesses other than minor injuries requiring only first aid treatment and not involving medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

Employers would be required to keep accurate records of employee exposures to potentially toxic materials or harmful physical agents. They would be required to notify employees exposed to toxic materials in concentrations or at levels which might exceed those prescribed by promulgated rules.

Citations and Enforcement:

Citations for violations issued by an inspector would have to be in writing and describe precisely the nature of the violation including the rule or order violated. In addition, the citation would fix a reasonable time for abatement.

Citations would have to be prominently posted.

The Commissioner after citation would be required to notify the employer, by certified mail, of the penalty assessed and the employer would have 15 days within which to contest the citation or penalty. If contested, an opportunity for a hearing would have to be provided before a hearing examiner. (Hearing examiner would be appointed by the Commissioner.)

Any person adversely affected by a final order of the Commissioner could obtain a review in the Appellate Division of the Superior Court. No objection that has not been urged before the hearings would be considered by the Court unless the failure to urge such objections is excused. Findings of fact of the Commissioner, if supported by substantial evidence, would be conclusive. The Court could order the taking of additional evidence before the Commissioner, who in turn could file modified or new findings and recommendations, if any, for modifying or setting aside the original order.

Employee Discharge and Right of Review:

No employer could discharge or discriminate against any employee because the employee filed a complaint or testified in any proceeding or for the exercise of any right under the Act. Employee complaints would be filed with the Commissioner. After investigation of the complaint, he would be empowered to bring a court action against the discriminant.

Procedures to Counteract Imminent Dangers:

The Chancery Division of the Superior Court would have jurisdiction, upon petition of the Commissioner, to restrain any conditions or practices which could reasonably be expected to cause death or physical harm. Any order issued could require steps to be taken to remove the imminent danger and prohibit employment of individuals in locations where the danger exists.

The inspector who concludes that an imminent danger exists in any place of employment would have to inform the employees and employers of the danger and that he is recommending relief be sought.

S-716/A-833 would provide for the confidentiality of Trade Secrets and would establish penalties. It would provide for a public employee safety program, collection of statistics and for establishment of education and training programs necessary to provide skilled manpower to carry out provisions of the Act. An annual report would have to be submitted to the Governor.

_____ Amendments
to
_____ Bill No. _____

Amend:

Page	Sec.	Line	Omit and Substitute:
11	15	1-4	<p>a. There is hereby established within the Department of Labor and Industry a Division of Occupational Safety and Health, the function of which shall be under the direction of the Commissioner to administer and enforce the provisions of this act and to perform such other duties as the Commissioner may direct or as may be provided by law.</p> <p>b. The Division of Occupational Safety and Health shall be administered by a Director of the Department of Labor and Industry, appointed by the Commissioner, who shall be a licensed professional engineer of this State or a certified safety professional with a minimum of 8 years safety experience.</p> <p>c. The functions and personnel of the Bureau of Engineering and Safety in the Department of Labor and Industry are hereby transferred to the Division of Occupational Safety and Health in the Department of Labor and Industry.</p>

Amend:

Page	Sec.	Line	Omit and Substitute:
14	19a	15	omit "commissioner", substitute "Review Commission"
14	19b	21	omit "commissioner" substitute "Review Commission"
15	19b	34	omit "commissioner", substitute "Review Commission"
15	19c	42	omit "a hearing examiner", substitute "the Review Commission"
15	19c	43	omit "hearing examiner", substitute "Review Commission"
15	19c	46	omit "hearing examiner", substitute "Review Commission"
15	19c	57	omit "commissioner, substitute "Review Commission"
15	20a	3	omit "commissioner", substitute "Review Commission"
15	20a	9	omit "commissioner's", substitute "Review Commission's"
15	20b	11	omit "commissioner", substitute "Review Commission"
15	20b	13	omit "commissioner", substitute "Review Commission"
16	20b	20	omit "commissioner", substitute "Review Commission"
16	20b	21	omit "commissioner", substitute "Review Commission"
16	20b	22	omit "commissioner" and "his", substitute "Review Commission" and "its"
16	20b	27	omit "his" substitute "its"
16	20b	28	omit "his" substitute "its"
16	20c	30	omit "commissioner's" substitute "Review Commission's"
16	20c	31	omit "commissioner's" substitute "Review Commission's"
16	20c	35	omit "his", substitute "a"; add after "order" - "of the Review Commission"
16	20d	44-45	omit "commissioner", substitute "Review Commission"

Omit

Omit and substitute:

Hearings.

The Occupational Safety and Health Review Commission

a. The Occupational Safety and Health Review Commission is hereby established. The Commission shall be composed of three members who shall be appointed by the Governor, by and with the consent of the Senate, from among persons who by reason of training, education, or experience are qualified to carry out the functions of the Commission under this Act. The Governor shall designate one of the members of the Commission to serve as Chairman.

b. The terms of members of the Commission shall be six years except that (1) the members of the Commission first taking office shall serve, as designated by the Governor, at the time of appointment, one for a term of two years, one for a term of four years and one for a term of six years, and (2) a vacancy caused by the death, resignation, or removal of a member prior to the expiration of the term for which he was appointed shall be filled only for the remainder of such unexpired term. A member of the Commission may be removed by the Governor for inefficiency, neglect of duty, or malfeasance in office.

c. The Occupational Safety and Health Commission shall have a common seal. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission and shall appoint such hearing examiners and other employees as he deems necessary to assist in the performance

Omit and Substitute:

22.

of the Commission's functions and to fix their compensation in accordance with the provisions of Title II, Civil Service, except where otherwise provided by statute. The assignment, removal and compensation of hearing examiners shall be in accordance with the provisions of Title II, Civil Service.

d. The Commission shall have a principal office and such other offices in such place and places as the Governor in writing may designate, and shall be provided with all necessary furniture, stationary, supplies and office appliances. The Commission shall meet at such times and places within this State as it may provide.

e. The Secretary or in his absence an assistant secretary shall keep full and correct minutes of all transactions and proceedings of the Commission and perform the other duties required of him. He shall be the official reporter of the proceedings of the Commission.

f. The members of the Commission shall each receive such compensation, on a per diem basis, as shall be provided by law.

g. The members, secretary, assistant secretaries and other employees of the board shall be entitled to receive from the State their necessary traveling expenses while traveling on the business of the Commission. Such traveling expenses shall be paid on proper voucher therefor approved by the Chairman of the Commission.

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h. for the purpose of carrying out its functions under this Act, two members of the Commission shall constitute a quorum and official action can be taken only on the affirmative vote of at least two members.

i. Every official act of the Commission shall be entered of record, and its hearings and records shall be open to the public. The Commission is authorized to make such rules as are necessary for the orderly transaction of its proceedings. Unless the Commission finds it necessary to adopt a different rule, its proceedings shall be in accordance with the State Administrative Code.

j. The Commission may order testimony to be taken by deposition in any proceedings pending before it at any state of such proceedings. Any person may be compelled to appear and depose, and to produce books, papers, or documents, in the same manner as witnesses may be compelled to appear and testify and produce like documentary evidence before the Commission. Witnesses whose depositions are taken under this subsection, and the persons taking such depositions, shall be entitled to the same fees as are paid for like services in the courts of New Jersey.

k. A hearing examiner appointed by the Commission shall hear, and make a determination upon, any proceedings instituted before the Commission and any motion in connection therewith, assigned to such hearing examiner by the Chairman of the Commission, and shall make a report of any such determination

Amend:

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which constitutes his final disposition of the proceedings.
The report of the hearing examiner shall become the final
order of the Commission within thirty days after such report
by the hearing examiner, unless within such period any Commission
member has directed that such report shall be reviewed by the
Commission.

STATEMENT OF MRS. R. RICKI STOCHAJ, PRESIDENT

CONSUMERS LEAGUE OF NEW JERSEY

AT A HEARING HELD IN TRENTON, N. J. BY THE
NEW JERSEY ASSEMBLY COMMITTEE ON LABOR - on -

TUESDAY, OCTOBER 29th, 1974

The Consumers League of New Jersey supports Assembly bill #833 introduced by Assemblymen Gallo and Bornheimer and the identical Senate bill #716, by Senators Merlino, Bedell and Martindell; which has already passed the Senate. They are measures of which their authors have good reason to be proud. We congratulate them all. The stated objective of this legislation to "assure safe and healthful working conditions for the working men and women of New Jersey", is an ideal toward which earlier New Jersey legislatures have been working for a long time. The good legislation enacted in our state in the past has paved the way for the legislation under discussion today.

Ten years ago an earlier Consumers League President was here in Trenton supporting a plan to revise some old safety laws that were out of date. The 1965 legislature did a very skillful piece of work when they replaced those out of date laws, saved the good parts and produced one comprehensive statute that the U. S. Bureau of Labor Standards praised at the time, as the best state law for the purpose in the United States. It was a great achievement for that time but we can do better now because under the federal Williams-Steiger Act of 1970, the federal government now offers active help and financial support to states that are willing to improve their laws to conform to federal standards and to enter into an agreement with the federal authorities for a partnership in which state and federal government work together in administering this plan. The states do not have to do this, so it is only those states that elect to use the

state-federal partnership that will do so. New Jersey was one of the first to use it. Both the present Commissioner of Labor and Industry and his predecessor determined that it would be of value here, and the New Jersey Plan, prepared by the department staff, was submitted to the U. S. Secretary of Labor two years ago and approved by him in January, 1973. That approval, however, is given on condition that the necessary state legislation be enacted before the end of this year. If that is done, some of the major advantages we foresee, include: -

New Jersey will be eligible to continue receiving Federal reimbursement for half the cost of administering the plan. We are receiving that much now, but only on a temporary basis until the legislature acts on this measure. The Bureau of Engineering and Safety of the Department of Labor and Industry, which has had long experience in administering the older state laws, can begin recruiting and training the additional staff needed to cover all places of employment for a labor force of over three million workers or about double the number covered by the old laws. The federal grants of 50% should cover the extra salaries. However, it takes time to train good inspectors and all that New Jersey has contracted to do is to develop a program and a staff in the next three years that will be capable of enforcing the federal act adequately at the end of that time.

Meanwhile, the state and federal compliance officers will continue to work together as they have been doing for some months to develop the new program. The federal administrators will monitor the way New Jersey does it for at least three years before determining whether it is satisfactory. Throughout that three year trial period, the federal administrator retains full power to do anything he considers necessary to make sure that the federal law is properly administered and enforced in New Jersey.

If at the end of the three years, the federal administrator determines that the New Jersey plan has become adequate to take over the full administrative responsibility, he may then turn it over to the state and give up his concurrent power. But he is still required by federal law, to continue to evaluate the way the state plan is administered and to monitor it. If, after turning over the responsibility to the state, the federal administrator finds that there is in New Jersey, "a failure to comply substantially", with the requirements of the state plan, he can put an end to the plan at any time by withdrawing approval.

The U. S. Secretary of Labor, as the administrator of the Federal Law, has authority to put an end to the state plan at any time during the three year trial period and also after that plan is fully operative. (Section 18 (e) and (f) of Federal Act.)

This combination of provisions in the federal law plus the monitoring and the concurrent power of the federal administrator during the three years development period, and his powers to put an end to that plan at any time that he may find it is not being properly administered would, we submit, result in a program that is both stronger and better protected against misuse than it would be if either state or federal government administered the federal law alone.

In making that statement we realize that the federal law of 1970 and its administrative Agency (OSHA) are still so new that many of its provisions have not yet been put to the test of use, or court interpretation. However, there has been one very helpful court opinion handed down last summer in the case of Robinson Pipe Cleaning Company, a Pennsylvania Corporation vs. the Department of Labor and Industry of the State of New Jersey, in which the judge upheld the right of the state to impose a penalty for violations of the state law in the

case of three men killed for lack of oxygen while working on sewers in Newark, last December. In his opinion, the judge analyzed the meaning of Section 18 of the federal law in its relation to the proposed New Jersey Plan. The decision was handed down last summer by Judge James Coolahan in the U. S. District Court, District of New Jersey, Civil Action 74-228.

The only alternative to this legislation available at this time is to defeat it or let it die. The effect of that would be to leave New Jersey without any enforceable work safety law because, under the Federal Act, OSHA must take over the entire responsibility for safety in any state that does not have an approved state plan. In the absence of such a plan OSHA regulations supersede all existing older state laws.

In our letter of October 4, 1974, to this Committee we referred to the deplorable conditions reported in our neighbor state of Pennsylvania after they withdrew a Pennsylvania state plan for administering the federal law, and thus relinquished all authority in that area to OSHA. For reasons not entirely clear, one year of OSHA administration ended with an increase of 18% in work injuries in that state. The number of lost-time injuries reached 134,866 the highest recorded since the department began compiling these statistics.

We enclose for the record, a copy of the official Commonwealth of Pennsylvania Department of Labor, News Release of February 26th, 1974; giving further details of these figures. The one encouraging item it contains is the fact that fatalities dropped from 564 to 495 that year.

At least part of the difficulty in Pennsylvania appears to have been inadequate

staffing. They had estimated that at least 400 field inspectors would be needed and OSHA only assigned in the neighborhood of 40, for the entire state. Mr. Paul J. Smith, Secretary of Labor for the Commonwealth of Pennsylvania, in a letter to us last May stated, "Pennsylvania does not seem to have enough Federal Inspectors assigned to meet our need, and to protect our work force." Compared to Pennsylvania's 40 workers, New Jersey at this writing has only 20 federal compliance officers plus three clerks. This number is just as inadequate for us as was 40 for Pennsylvania. It would appear entirely likely that the workers of New Jersey will pay for this kind of economy by a similar increase in the number injured. We regret to report that there seems to be no indication that, in the foreseeable future, OSHA will have anything like the staff needed to protect our labor force any better than they did in Pennsylvania.

Since the October 4th letter to this committee was written, further evidence of serious shortcomings in OSHA's administrative program has been received from Senator Harrison A. Williams. The U. S. Senate Labor Sub-committee has been conducting oversight hearings to ascertain the effectiveness of OSHA in protecting the safety and health of American workers. The Labor Sub-committee, last summer requested assistance from the General Accounting Office in examining the OSHA operations which they felt to be of utmost importance. The Sub-committee staff then developed 17 OSHA related issue papers intended to point out areas in which OSHA seems not to have demonstrated effectiveness. The record is so discouraging that on September 5th, 1974 Senator Williams wrote to the U. S. Secretary of Labor asking, "immediate application of corrective measures", for some of the more serious problems and stating, in conclusion: "As a result of these findings, our Sub-committee has been forced to conclude that the Act has yet to be properly implemented." (A copy of the Senator's three page letter is

enclosed for the record).

The latest, and in some ways, the most alarming development is OSHA's proposal to lower the already low standards for the housing of migrant farm workers in labor camps. These proposals published in the Federal Register of September 23rd, 1974 were distributed by the New York Regional office of OSHA on October 15th, 1974. The deadline for filing comments on the proposals was October 23rd, which has already passed. Michael S. Berger, Director of the Camden Regional Services Farmworker Division, brought this destructive proposal to the attention of participants in a Symposium on Farmworkers held on Saturday, October 19th, 1974 at Seton Hall University. Petitions requesting an extension of time for filing comments and for a hearing before these new standards are put into effect have been filed by the Consumers League and other organizations concerned about farmworkers.

In presenting these facts we are not condemning OSHA. On the contrary, we have long supported the philosophy of the Williams-Steiger Act. Our concern is for its effective implementation. Senator Williams letter to Secretary Brennan and the report that went with it encourages hope that OSHA's problems may be on the way to solution. However, problem areas so disturbing will take time to correct. Meanwhile, the effect of the poor implementation means that the workers of New Jersey will be denied the protection they have a right to expect unless this legislature asserts its right to protect them by a state law such as you are considering. We know that there are people who honestly think the Williams-Steiger Law should be entirely a federal responsibility and that any state participation will weaken it. However, the authors of the Williams-Steiger Law

did not write it as an exclusive federal responsibility. On the contrary, they stated in the preamble to the Act, that it is an Act "to assure safe and healthful working conditions for working men and women by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions: by providing for research, information, education and training ..." (emphasis added).

Again in Sec (2) (b) (11) the Act provides that one means by which the purpose and policy of the ^{V.S.} Congress, "to assure so far as possible" those safe conditions is, "by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to develop plans in accordance with the provisions of this Act to improve the administration and enforcement" of the State laws. (emphasis added)

The provisions quoted above and the detailed provisions of Section 18 on STATE JURISDICTION AND PLANS and Section 23 re grants to the states that take advantage of the encouragement offered, all imply that the authors of the Act, while not making it mandatory for the States to use the state federal partnership plan, give substantial encouragement to any state that "desires" to do so. At last report, 25 states have approved plans. Most of them are the developmental kind like ours. That is, a plan to develop into an adequate administrative program in the three year trial period. Twenty-two have enacted the necessary legislation to start using them under federal guidance. Other plans are awaiting approval and still others have either decided not to submit a plan or have withdrawn it as Pennsylvania did. In one case, OSHA disapproved a plan.

We don't pretend to know whether this is the best way. We think it good enough for New Jersey to be worth a three year trial and one of its advantages in our

opinion is that it does not require the legislature to make a permanent decision now as to what we want permanently. The alternative of letting this bill die would probably be permanent because the dollar cost alone of starting over again after letting OSHA take over promises to be prohibitive. The Federal Government gave New Jersey substantial grants to develop the plan incorporated in these bills but it is extremely unlikely that they would do that again.

Another advantage of the measure before you is that for the next three years, while it is being tried, New Jersey can assure our migrant farm workers the benefit of our superior housing code for migrant camps even if OSHA insists on lowering their housing standards. The provision that a state plan must be at least as effective as the standards of the federal act means that our standards can be better for farmworkers or for any workers if the New Jersey Legislature so orders.

HARRISON A. WILLIAMS, N.J., CHAIRMAN
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MARK T. NOTO, STAFF DIRECTOR
ROBERT E. PAGLE, GENERAL COUNSEL

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE
WASHINGTON, D.C. 20510

September 5, 1974

Honorable Peter J. Brennan
The Secretary
Department of Labor
Washington, D. C. 20210

Dear Mr. Secretary:

Three years have passed since the implementation of the Occupational Safety and Health Act (OSHA), hailed at its passage by the President as one of the most important pieces of legislation ever passed by the Congress in that it involves the lives of about 60 million people.

We concur with this assessment of the importance of the Act, and in this regard we have been conducting oversight hearings to ascertain its effectiveness on the safety and health of American workers.

As part of these efforts, the Labor Subcommittee requested assistance from the General Accounting Office in examining the OSHA operations which we felt to be of the utmost importance. The Subcommittee staff then developed 17 OSHA-related issue papers intended to point out areas in which OSHA seems not to have demonstrated effectiveness. A copy of the staff report is enclosed with this letter.

The results are not encouraging. In fact, some of our findings would seem to necessitate the immediate application of corrective measures if OSHA is to have any meaningful effect on the safety and health conditions of the American workplace. The following is a partial list of the more disturbing problem areas:

1. After 3 years of record-collecting, OSHA has failed to develop the necessary statistical information by which to measure OSHA's impact on safety and health conditions. In fact, the current data system does not provide information in a form that is useful for management information and monitoring purposes. For instance,

it is impossible to determine whether serious violations have been followed up, whether hazards have in fact been abated, and whether OSHA is inspecting those establishments which are most accident-prone.

2. There seem to be no uniform application of guidelines covering the issuance of citations in circumstances where there is employer unawareness of hazardous conditions; where multiple-employer worksites are involved; where there is no obvious employee exposure; and where the employer agrees to the immediate abatement of a hazard.
3. There have been claims that OSHA is based on punitive measures rather than voluntary compliance. However, these claims do not seem to be substantiated by the available statistics. Non-serious violations account for an incredible 98.6% of all violations, with average penalty assessments of only \$18. In contrast, the number of serious violations totals only 1.3%, while willful, repeat, and imminent danger violations constitute less than 1%. The low number of serious violations being cited would seem to indicate either that (1) there is haphazard selection of establishments to be inspected which, consequently, bears little or no relationship to the serious accidents and illnesses which are occupationally related; or that (2) serious hazards are, in fact, being found but are not being cited as serious violations; or that (3) OSHA is devoting an inordinate amount of time to non-serious violations.
4. There have been instances of unduly lengthy periods between inspections and the issuance of a citation even where death of an employee was involved. Long delays, sometimes averaging over three months, are also involved in the processing of complaints.
5. OSHA has not exercised its authority to require employers to conduct inspections of their own worksites.
6. Inspection activity in the maritime industry has declined dramatically since OSHA's pre-emption of

Honorable Peter J. Brennan
September 5, 1974
Page Three

the safety and health program formerly administered by the Bureau of Labor Standards under the Longshoremen's and Harbor Workers' Compensation Act. During fiscal year 1974, the number of establishments found in compliance by OSHA officials was 68% as compared to the general industry average of 26%, in spite of the fact that accident frequency rates in the maritime industry remain excessively high. This indicates that OSHA has failed to direct its inspection activity into high hazard areas.

7. OSHA has promulgated standards for only three hazardous substances in the past three years. Criteria documents submitted as long as two years ago are still languishing somewhere in OSHA's standards-making process.

As a result of these findings, our Subcommittee has been forced to conclude that the Act has yet to be properly implemented. It has been shackled by an administrative ineptness which is being compounded by the lack of relevant management information.

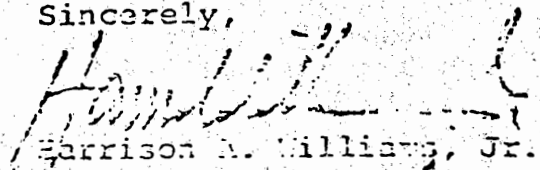
I feel certain that you can appreciate the seriousness of this situation and will take the necessary steps to rectify it.

We are requesting that you provide answers to the questions raised in the GAO papers for the Record, and submit to us some proposals as to how you plan to correct each of the problem areas mentioned above. In addition, we further request that a progress report on the implementation of these proposals be forwarded to us within three months.

We will continue to maintain an interest in the safety and health of American workers through oversight hearings.

With best wishes.

Sincerely,


Harrison A. Williams, Jr.
Chairman



NEW JERSEY STATE
CHAMBER OF COMMERCE

54 PARK PLACE □ NEWARK, N.J. 07102

STATEMENT
of the

COMMITTEE ON WORKER HEALTH AND SAFETY,
NEW JERSEY STATE CHAMBER OF COMMERCE

on

SENATE BILL NO. 761, and ASSEMBLY BILL NO. 833

Presented at the Public Hearing

Held by the

NEW JERSEY ASSEMBLY COMMITTEE ON LABOR RELATIONS

Trenton, New Jersey

October 29, 1974

* * * * *

My name is Michael J. O'Neil, and I am appearing here today to represent the New Jersey State Chamber of Commerce's Committee on Worker Health and Safety, of which I am Chairman.

The State Chamber long has been involved with the occupational safety and health of the citizens of New Jersey, and was active in the evolution of the existing Worker Health and Safety Act of 1965, and the regulations adopted thereunder. We have supported, and continue to support, sound occupational safety and health statutes and regulations, and effective programs to implement such measures.

Our statement will be brief. Having presented our views to this Committee on previous occasions when A-833 was among the bills under consideration, we do not wish to be unduly repetitive. However, since these proceedings are to be a matter of public record, we would like to have our views included therein.

At the outset, the State Chamber wishes to express its basic support of the concept of New Jersey resuming complete responsibility for the occupational health and safety of the working population of New Jersey, in conformance with the provisions of the Federal Occupational Safety and Health Act (OSHA) of 1970. Already, 27 states have had their implementation plans approved, and only three of those states (New Jersey, New York and Michigan) have yet to enact enabling legislation.

The Federal Act specifically states that it is the policy of the U. S. Government to assure safe and healthful working conditions for its citizens "by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws," and it further provides grants to the States to implement this policy. In view of New Jersey's excellent record of maintaining an effective program of industrial safety and health, and of its present capability to provide more effective employee protection than is the Federal OSHA program, we believe this State is uniquely qualified to administer and enforce its own program and that the proposed legislation before this Committee should be enacted.

We would recommend, however, that this Committee consider several proposed amendments which we will describe below, and which we believe will enhance the objectives of the bills, i.e., safe and healthful working conditions for the citizens of New Jersey. Please note that we do not hinge our support of these bills on the adoption of the proposed amendments, and that we would continue to support A-833 and S-716 even if this Committee is not disposed to adopt our recommendations. We suggest the Committee consider the following:

- (1) The State Plan provides no independent Review Commission. The plan does empower the Commissioner of Labor & Industry to appoint hearing examiners, but the Commissioner has the authority to override the hearing examiner's decision.

We recommend the establishment of an independent Review Commission under the New Jersey Plan to provide due process as contained in the Federal Act.

- (2) The State Plan would seriously weaken three features of the present State accident prevention program which enabled the Bureau of Engineering and Safety, as well as industry, to effectively reduce accidents. These features are:

--The New Jersey State Industrial Safety Committee, which has been in existence since 1921, would be eliminated. This 100-member committee, which advises the Commissioner, has played an important part in the development of the engineering, educational and promotional programs of the Bureau, and has assisted in the development of many of the effective State safety regulations.

We recommend that the official status of the Committee be continued.

--The New Jersey State Industrial Safety Board, created by the Worker Health and Safety Act of 1965, would be eliminated. The 16-member Board is appointed by the Governor. It now must approve a standard prior to the standard's promulgation.

We recommend that the Board be retained with its veto power over a New Jersey standard where either there is no applicable Federal standard, or where certain

portions exceed the requirements of the Federal standard.

--While the existing Worker Health and Safety Act requires the Deputy Director of the Bureau of Engineering and Safety to be a Professional Engineer, the proposed New Jersey Plan would require professionalism only at the engineer's level within the Bureau. There would be four levels of supervision over Professional Engineers and Industrial Hygienists in the Division on Workplace Standards.

We recommend that specifications for the professional safety and health qualifications of administrative and enforcement personnel be included. Additionally, we recommend that the Division of Workplace Standards be substituted by a Division of Occupational Safety and Health which would administer and enforce the Act, and which would be administered by a licensed professional engineer.

We are aware that those who oppose these bills believe that safety and health standards in New Jersey would be compromised if the State were to assume jurisdiction. This apparently is a gross misunderstanding. The Federal Act specifically requires that State plans must:

- Provide for the development and enforcement of standards at least as effective as the Federal;
- Provide for the right of entry and inspection at least as effective as the Federal;
- Provide for an effective and comprehensive program for all employees of public agencies; and
- Contain satisfactory assurances of sufficient legal authority, qualified personnel, and adequate funds.

New Jersey's Plan includes the above four points.

For these reasons we urge this Committee to report out either A-833 or S-716 favorably, preferably with our suggested amendments, and

to support its passage in the Assembly.

Thank you for this opportunity to present our views on these bills.

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UTILITY CONTRACTORS ASSOCIATION OF NEW JERSEY, INC.

146 Route 1, Edison, N. J. 08817

201-572-5801



November 1, 1974

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Honorable
Mr. Jackman
Assembly Labor Committee
State House
Trenton, New Jersey

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Dear Mr. Jackman:

I want to take this opportunity to submit thoughts from the utility contracting industry regarding the proposed New Jersey OSHA Plan that is now before your committee. This legislation is certainly an important concern from both labor and management in our state.

As you well know, New Jersey has experienced an excellent safety program when compared to others around the country. In fact, there are some within the construction industry who feel that the presence of federal safety inspectors might in fact deter our state program.

The New Jersey enforcement of OSHA will enable our state to provide an even broader program of safety compliance. Federal funds can be used for additional staff and other state reimbursement so that major industries and their employees can continue to experience from the expertise and advantages of a "home rule" safety environment.

Current governmental practices are moving toward more responsibility for the states and less power to the federal government. New Jersey is one state that is prepared to utilize such a philosophy regarding enforcement of OSHA. As a progressive state with an excellent safety program, we should take advantage of this opportunity and move with legislative action.

IMMEDIATE PAST PRESIDENT

Roy L. Day

EXECUTIVE DIRECTOR

Robert A. Briant

LEGAL COUNSEL

Rosenberg & Waldman

Mr. Jackman
November 1, 1974

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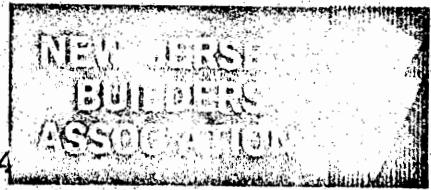
It is our firm belief that a federal program for OSHA enforcement will ultimately lower our state's standard. Our industry is familiar with the state program, and we feel that to change now would be a serious mistake.

Sincerely yours,

ROBERT A. BRIANT
Executive Director

✓ RAB:bb

cc: Mr. Ben-Asher



April 24, 1974

Hon. Christopher Jackman, Chairman
Assembly Labor Relations Committee
The State House
Trenton, N.J. 08625

Dear Chairman Jackman:

Assembly Bill 833 would provide for the State of New Jersey to assume the administration and enforcement of the Occupational Safety and Health Act (OSHA).

Earlier this month, representatives of the New Jersey Builders Association along with representatives of several other construction associations met with Joseph Hofman, Commissioner of Labor and Industry, to discuss A-833. Although our Association firmly believes that the State of New Jersey should assume the administration of OSHA, we do have several reservations about A-833, which we expressed to the Commissioner and which we will enumerate below.

1. Under the provisions of A-833, the Commissioner of the Department of Labor and Industry would enforce the basic OSHA regulations as they exist today, but he would also have the power to promulgate additional rules and regulations for use in New Jersey provided that such regulations were as strict or stricter than the federal restrictions

A-833 would also provide that the Commissioner would be advised by a 25-member Advisory Committee with regard to proposed new regulations but he would not be bound by their advice. The New Jersey Builders Association believes that this Advisory Committee should have veto-power over the Commissioner in the very same way that an Advisory Committee has such a veto-power over the Secretary of Labor on the federal level with regard to OSHA regulations. In this way, the Advisory Committee could serve its true purpose and could help guard against rules and regulations which might be ill-conceived.

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AFFILIATED ASSOCIATIONS

• National Association of Home Builders • Atlantic Home Builders Association of N.J. • Home Builders Association of Cape May County • Central Jersey Builders Association • Builders Association of Cumberland County • Builders Association of Metropolitan N.J. • Builders Association of Northern N.J. • Home Builders Association of Northwest N.J. • N.J. Shore Builders Association • Home Builders Association of Somerset & Morris Counties • Home Builders League of South Jersey



2. We would also recommend that the bill be amended to provide for an Appeal Board after a person has been fined for a violation. As A-833 is presently written, once a citation has been issued, it may be appealed before a hearing examiner who is appointed by the Commissioner. If the accused party is dissatisfied with the findings of the hearing, his only recourse is with the Appellate Division of the Superior Court.

We would recommend that a 3-man Appeal Board be established and that it hear appeals after they have gone to the hearing examiner but before the individual would have to go to the Appellate Division. In this way, a number of unnecessary court appearances could be avoided.

When we recommended these two changes to the Commissioner, he indicated that it would be difficult to incorporate either of the recommendations since A-833 was approved by the Federal Government in its present form and if the bill was to be changed, the Commissioner would have to again present it to the Federal Government for their approval. Since he is operating under a tight time schedule because A-833 must be adopted by June 30th, in order to avoid federal pre-emption, he felt that the best course of action would be to present the bill in its present form for passage by the legislature and to simultaneously research both the existing federal regulation and legislation in other states which have assumed the administration of OSHA.

The Commissioner promised to reconvene a meeting of the various construction groups 90 days after the passage of the bill, assuming it is passed, at which time he would consider further the above recommendations. Since we are well aware of the demanding time schedule which confronts the Commissioner and since we are in agreement with the basic concept of the legislation, we would recommend to the committee that it support A-833.

However, we felt it necessary to place into the record our specific recommendations and we anticipate discussing these recommendations with the Commissioner at a later date. I hope the committee will give serious consideration to the above comments.

Sincerely,


Philip J. Cocuzza
Executive Vice President

PJC:nsc

cc: Members of Assembly
Labor Relations

NEW JERSEY SOCIETY OF ARCHITECTS
A REGION OF THE AMERICAN INSTITUTE OF ARCHITECTS

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June 7, 1974

ARTHUR RIGOLO, FAIA • Regional Director
MRS. HELEN T. SCHNEIDER, HON. AIA • Executive Director

Assemblyman Christopher J. Jackman
6110 Monitor Place
West New York, N. Y. 07093

Re: A-833

Dear Mr. Jackman:

The New Jersey Society of Architects supports the above captioned bill for the following reasons:

1. Administration of the bill on the State level would be more efficient than on the Federal level.
2. Proposals, objections and subsequent hearings would be readily available for all interested parties.
3. An advisory committee would be appointed which presumably would be more sensitive to local matters.
4. The State has presently in operation (Labor Department) facilities to administer code including personnel.
5. The financial burden to the State would be modified by a Federal grant of up to 50% of the total operational cost.

We urge your support of this legislation.

Very truly yours,



Mrs. Helen T. Schneider, Hon. AIA
Executive Director

HTS:rw

cc: Assymen, Sinsimer, Brown, Fitzpatrick, Gallo, Patero, Totaro, Hurley,
Littell, Bornheimer

Staff: D. Ben-Asher

33 X

BUILDING CONTRACTORS ASSOCIATION OF NEW JERSEY

500 MORRIS AVENUE, SPRINGFIELD, NEW JERSEY 07081

201/376-6900



Louis Hajdu, *President*

Anthony Costanza, *Vice President*

Michael R. Jensen, *Treasurer*

Joseph L. Muscarelle, Jr., *Secretary*

D. Bruce Evans, *Managing Director*



TO: ALL MEMBERS OF THE ASSEMBLY LABOR COMMITTEE

FROM: ARTHUR T. YOUNG

SUBJECT: A-833 - OCCUPATIONAL SAFETY AND HEALTH ACT - STATE OF N.J.

The Building Contractors Association of New Jersey represents 400 General Contractors, Subcontractors, and supplier member companies in the State of New Jersey. Our members account for 58% of the commercial and industrial building done annually in the State of New Jersey.

As an association, we support the State assumption of OSHA enforcement, rather than continued Federal control.

We believe that:

1. Because this legislation has a direct effect on labor relations, employment, plant locations, etc., and is of such vital interest to both labor and management that the State must maintain significant control over occupational safety and health. The Federal Government is just too far removed to pay special attention to our particular problems.
2. State enforcement is much more efficient and therefore much more effective in promulgating safer conditions for New Jersey's labor force. State inspectors are better trained, have more experience in construction, and are, by far, more efficient in enforcing construction related regulations. In 1972, for instance, OSHA corrected 3,500 violations. The State corrected 85,000 violations.
3. It is our belief that the cost figures being projected on the State project are exaggerated. We believe that the 50% Federal Funding will enable us to affect a maximum project at a minimal cost.
4. If the State does not take over, it is our understanding that public employees in New Jersey will not have the protection of occupational safety and health regulations.

This Association would be amenable to certain amendments regarding A-833. Specifically, we would like to see the following:

1. The establishment of a separate Examining Board for the purpose of appeal. We think that the courts are the wrong way to go due to the already overcrowded calendars resulting in lengthy delays before matters such as this can be adjudicated.
2. We would like to see a provision limiting the Commissioner of Labor and Industry's authority, prohibiting the Commissioner from setting standards more stringent than existing Federal standards.
3. Continuation of the Bureau of Engineering and Safety as the responsible department for the administration and enforcement of the State plan.

Thank you for the opportunity to speak on this matter.

STATEMENT TO THE ASSEMBLY LABOR COMMITTEE ON S716

My name is Lucy Mackenzie, I live at 369 Dodds Lane, Princeton. As co-chairmen of the Coalition for the Rights of New Jersey Farmworkers, I am appearing in support of S-716. I should state, for the record, that one of the organizations represented by the Coalition, the AFL-CIO, does not share our views and is opposing the bill.

On September 23, 1974 OSHA proposed a revision of its regulations relating to labor camps for agricultural workers. The new regulations represent a giant leap backward for the health and safety of farmworkers, and would permit standards which have not been tolerated in New Jersey for years. They indicate an embarrassing bow by OSHA to the political pressures obviously exerted by special farmer interest groups. Let me give you a few examples. The new rules would:

- (1) delete the requirement that drainage through and from the camp would not endanger any public water supply.
- (2) delete the requirement that living quarters be located at least 500 ft. from livestock.
- (3) delete spacing requirements between beds, permitting an unlimited number of beds in any one dwelling unit.
- (4) delete the requirement that windows be provided for purposes of ventilation.
- (5) delete the requirement for number of stoves.
- (6) drastically weaken structural requirements for housing.
- (7) delete the requirement for electricity for lighting, as long as some form of lighting is provided.

These are only a few of the weakened regulations. The most incredible change requires that the farmworker seek "alternate housing" in order to prove that he is forced to live at the camp. In other words, the penniless migrant who is brought to the farm near Cranbury, for example, would have to spend several days looking for a house or apartment to rent in Cranbury, Princeton, Plainsboro, Hightstown, etc.

Since most workers don't have cars, this househunting would have to be done on foot. As you are well aware, New Jersey is suffering an acute housing shortage which affects even those who can afford alternate housing. To pretend that farmworkers can afford such housing, even if it were available, is shameful. Even worse, this rule is being proposed when OSHA knows full well that the local communities are hostile to farmworkers and would be most unwilling to accept them "in town." This rule exemplifies the abandonment of worker protection inherent in the new OSHA standards.

At present, the State of New Jersey has its own, more stringent regulations protecting farmworkers. But if these new federal rules are adopted, and if S-716 does not pass, the federal regulations will become our regulations. In addition, the Bureau of Migrant Labor will cease to exist, and the sixteen camp inspectors now employed by the Bureau will be removed, to be replaced by far fewer federal inspectors.

Members of the Coalition are often at odds with officials of Labor and Industry. We are glad to have this opportunity to speak in praise of them. They are available to us, they are responsive, they are willing to communicate. They answer phone calls, and they even make time for us when we drop in unannounced. We may not always like what they say, but they talk to us, and often take action in response to our requests. If S-716 does not pass, our input and influence will drop to zero. Besides the obvious fact that Washington is far away for most of us, federal OSHA officials will be subject to pressures from the 49 other states, many of them far behind New Jersey in this field. We are very seriously concerned for the health and safety of the farmworkers of this state.

It is inconceivable to us that the legislature of the State of New Jersey would concede total jurisdiction over the occupational safety and health of its citizens to the Federal Government. We ask that S-716 be released for a floor vote in the Assembly.



REPLY TO: Cy Rubin, Director of Inspections
Township of Lakewood, N.J.

Public Hearing on Assembly Bill 833 before the Labor Relations
Committee.

Members of the Labor Relations Committee, my name is Cy Rubin. I am the Director of Inspections for the Township of Lakewood, New Jersey and I am also the First Vice President of the Building Officials Association of New Jersey and it is this group that I represent today.

Just a few days ago, I asked the sponser of this bill Assemblyman Gallo what effect this legislation would have on municipal inspection departments as well as local building codes. Mr. Gallo honestly answered me by saying that he didn't know and had never really thought about it. Last Thursday, I posed the same question to Daniel Ben Asher the staff member of this committee. He said the question had come up before but had not been resolved. I certainly appreciated the sincerity of these two men and having been with the Department of Community Affairs for almost two years working closely with the State Legislature, can understand how and why things of this nature occur.

The main concern of Building Codes is the health, welfare and safety of the general public and our association supports this concept. When Senators Williams and Steiger proposed the Occupational Safety and Health Act in 1970, I'm sure that their intentions were not to infringe upon home rule, local building inspectors and local building codes. Assembly Bill 833 gives

the Commissioner of the Department of Labor and Industry enormous powers together with his hand picked advisory committee. Will these powers usurp home rule? Too many State Agencies have created independent kingdoms for themselves which defeat the very purpose for which they were established. There are many reasons for some of these failures such as lack of funds for adequate staffing, lack of proper personnel etc. Some example of this are the many new responsibilities given the Department of Environmental Protection by recent legislation without proper staff has become a tremendous problem for those dealing with the Department. The Department of Education is responsible for school house construction throughout the entire State. They have three field inspectors covering this large area and not doing a very good job because it is virtually impossible for three men to cover the entire State. The Bureau of Weights and Measures have three men again covering the entire State who are responsible for the grading of lumber.

In closing I would like to state that this is powerful legislation and we must be certain as to how it will effect:

1. Local Building Codes.
2. The proposed State Uniform Construction Code which is presently before both houses of the legislature.
3. Local Code Enforcement Personnel.
4. Home Rule.

Thank you for giving me the opportunity to appear before you today.

CY RUBIN
 Director Of Inspections
 First Vice President
 Building Officials Association
 of New Jersey

CR:kb